

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

VOL. 36

JUNE 5, 2002

NO. 23

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**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

19 CFR Part 122

(T.D. 02-27)

NEW USER FEE AIRPORT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the establishment of a new user fee airport in Dallas, Texas. A user fee airport is one which, while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of Customs to receive, for a fee, the services of a Customs officer for the processing of aircraft entering the United States and their passengers and cargo.

EFFECTIVE DATE: May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Bruner, Mission Support, Office of Field Operations, (202) 927-2290.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 122, Customs Regulations (19 CFR Part 122), sets forth regulations that are applicable to all international air commerce relating to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft.

Under § 1644a, Title 19, United States Code (19 U.S.C. 1644a), the Secretary of the Treasury is authorized to designate places in the United States as ports of entry for civil aircraft arriving from any place outside of the United States, and for merchandise carried on the aircraft. These airports are referred to as international airports, and the location and name of each are listed in § 122.13, Customs Regulations (19 CFR 122.13). In accordance with § 122.33, Customs Regulations (19 CFR 122.33), the first landing of every civil aircraft entering the United States from a foreign area must be at one of these international airports,

unless the aircraft has been specifically exempted from this requirement or permission to land elsewhere has been granted. Customs officers are assigned to all international airports to accept entries of merchandise, collect duties and enforce the customs laws and regulations.

Other than making an emergency or forced landing, if a civil aircraft desires to land at an airport not designated by Customs as an international airport, the pilot may request permission to land at a specific airport. If permission is granted, Customs will assign personnel to that airport for the aircraft. The airport where the aircraft is permitted to land is called a landing rights airport (19 CFR 122.14).

Section 236 of Pub. L. 98-573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask Customs for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of Customs business at the airport is insufficient to justify the availability of Customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of Customs services is not paid for out of the Customs appropriations from the general treasury of the United States. Instead, the services of Customs officers are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the Customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing Customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the Customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport of that airport's authority agrees to pay Customs a flat fee annually and the users of the airport are to reimburse that airport/airport authority. The airport/airport authority agrees to set and periodically to review its charges to ensure that they are in accord with the airport's expenses.

Pursuant to Treasury Department Order No. 165, Revised (Treasury Decision 53564), all the rights, privileges, powers and duties vested in the Secretary of the Treasury by the Tariff Act of 1930, as amended, by

the navigation laws, or by any other laws administered by Customs, are transferred to the Commissioner of Customs. Accordingly, the authority granted to the Secretary of the Treasury to designate user fee airports and to determine appropriate fees is delegated to the Commissioner of Customs.

Under this authority, Customs has determined that certain conditions must be met before an airport can be designated as a user fee airport. At least one full-time Customs officer must be requested, and the airport must be responsible for providing Customs with satisfactory office space, equipment and supplies, at no cost to the Federal Government.

Thirty-six airports are currently listed in § 122.15, Customs Regulations, as user fee airports. This document revises the list of user fee airports. It adds McKinney Municipal Airport, in Dallas, Texas, to this listing of designated user fee airports.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely updates the list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 122

Air carriers, Aircraft, Airports, Customs Duties and Inspection, Freight.

AMENDMENT TO THE REGULATIONS

Part 122, Customs Regulations (19 CFR Part 122) is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122, Customs Regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. The listing of user fee airports in section 122.15(b) is amended by adding, in alphabetical order, in the "Location" column, "Dallas, Texas" and by adding on the same line, in the "Name" column, "McKinney Municipal Airport".

ROBERT C. BONNER,
Commissioner of Customs.

Approved: May 16, 2002.

TIMOTHY E. SKUD,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 21, 2002 (67 FR 35722)]

19 CFR Part 141

(T.D. 02-28)

TECHNICAL AMENDMENT TO THE CUSTOMS REGULATIONS: REUSABLE SHIPPING DEVICES ARRIVING FROM CANADA AND MEXICO

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include certain reusable shipping devices arriving from Canada or Mexico in the list of merchandise excepted from the requirement that all merchandise imported into the United States be entered. The substantive regulation allowing for these types of devices to be excepted from entry is set forth in § 10.41b(b) of the Customs Regulations. During a periodic review of its regulations to ensure that they are current, correct and consistent, Customs noted that in § 141.4 of the Customs Regulations, the list of merchandise excepted from the entry requirement did not cross-reference § 10.41b(b). This document remedies that omission.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Office of Regulations and Rulings, 202-927-1327.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under § 141.4(a), Customs Regulations (19 CFR 141.4(a)), all merchandise imported into the United States is required to be entered, unless specifically excepted. The exceptions from the general rule that all

imported merchandise must be entered are set forth in § 141.4(b), Customs Regulations (19 CFR 141.4(b)). In particular, § 141.4(b)(3) excepts instruments of international trade as described in § 10.41a, Customs Regulations (19 CFR 10.41a). In addition to this exemption from entry, however, certain reusable shipping devices arriving from Canada or Mexico are also exempted from entry pursuant to § 10.41b(b), Customs Regulations (19 CFR 10.41b(b)), as amended by Treasury Decision (T.D.) 96-20 (61 FR 7987) of March 1, 1996.

Accordingly, this document amends § 141.4(b)(3), Customs Regulations (19 CFR 141.4(b)(3)), to include a reference to § 10.41b(b), in order to reflect that reusable shipping devices from Canada or Mexico are also exempted from Customs entry requirements. Furthermore, a reference is added in § 141.4(b)(3) to Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS), which provides the underlying legal authority for the exemption of the specified shipping devices from Customs entry requirements.

ADMINISTRATIVE PROCEDURE ACT,
THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because the amendments merely conform with existing law or regulation, notice and public procedure are unnecessary, and for the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor do these amendments meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

AMENDMENT TO THE REGULATION

Part 141, Customs Regulations (19 CFR 141) is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141, Customs Regulations, continues to read, and the specific sectional authority for § 141.4 is revised to read, as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.4 also issued under 19 U.S.C 1202 (General Note 19; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1;

Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

* * * * *

2. Section 141.4 is amended by revising paragraph (b)(3) to read as follows:

§ 141.4 Entry required.

* * * * *

(b) Exceptions.

* * * * *

(3) Instruments of international traffic described in § 10.41a and § 10.41b(b) of this chapter, under the conditions provided for in those sections. See also Chapter 98, Subpart III, U.S. Notes 3 and 4, HTSUS.

* * * * *

ROBERT C. BONNER,
Commissioner of Customs.

Approved: May 17, 2002.

TIMOTHY E. SKUD,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 23, 2002 (67 FR 36096)]

U.S. Customs Service

General Notices

EXTENSION OF DUTY-FREE TREATMENT FOR CERTAIN AGRICULTURAL PRODUCTS OF ISRAEL

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document informs the public of the extension of duty-free treatment for certain agricultural products of Israel and advises the public of the procedures that are available to ensure that duty-free treatment will be accorded to eligible products that were entered, or withdrawn from warehouse for consumption, between January 1, 2002, and the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Connie Chancey, Quota Branch, Office of Field Operations (202-927-5850)

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel ("the FTA Agreement") which was approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 ("the FTA Act," codified at 19 U.S.C. 2112 Note). Section 4(b) of the FTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA Agreement, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the FTA Agreement.

On November 4, 1996, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products, effective from December 4, 1996, through December 31, 2001 ("the 1996 Agreement"), in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade while acknowledging differing interpretations as to the meaning of cer-

tain rights and obligations in the FTA Agreement as to that trade. Accordingly, pursuant to section 4(b) of the FTA Act, President Clinton issued Proclamation 6962 of December 2, 1996, in order to provide to Israel, through the close of December 31, 2001, access into customs territory of the United States for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges, consistent with the 1996 Agreement. This Proclamation included appropriate tariff modifications, the terms of which are set forth in Subchapter VIII, Chapter 99, Harmonized Tariff Schedule of the United States (HTSUS).

On December 31, 2001, the United States entered into an agreement with Israel to extend the 1996 Agreement through December 31, 2002, in order to allow for additional time to negotiate a successor arrangement to the 1996 Agreement. Accordingly, pursuant to section 4(b) of the FTA Act, President Bush issued Proclamation 7554 of May 3, 2002, to extend, through the close of December 31, 2002, the U.S. commitments under the 1996 Agreement. The Annex to this Proclamation set forth appropriate modifications to the HTSUS which, under the terms of the Proclamation, are effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, including entries for which the liquidation of duties has not become final under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

ENTRY AMENDMENT PROCEDURES

In the case of products that are eligible for treatment under Subchapter VIII, Chapter 99, HTSUS, as modified by Proclamation 7554, but for which no claim for that treatment was made because the products were entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, and before the publication of this notice, and provided that liquidation has not become final under 19 U.S.C. 1514 with respect to those products, importers may avail themselves of one of the following procedures in order to make a retroactive claim for that treatment:

1. The importer may amend the entry by filing a Supplementary Information Letter (SIL) with Customs. For the policy on SILs, ABI users should see Administrative Message 97-0727 dated August 3, 1997, and non-ABI filers should contact the local Customs port office;

2. The importer may make a Post Entry Amendment (PEA) in accordance with the requirements and procedures set forth in the notice published in the Federal Register (65 FR 70872) on November 28, 2000, regarding the PEA test program. The operation of the PEA test program was extended to December 31, 2002, by a notice published in the Federal Register (67 FR 768) on January 7, 2002; or

3. The importer may file a protest in accordance with 19 U.S.C. 1514 and 1515 and Part 174 of the Customs Regulations (19 CFR Part 174).

Submission of a retroactive claim under one of the procedures mentioned above does not automatically guarantee the refund of duties deposited with Customs, and Customs notes in this regard that the

applicable calendar year 2002 quota provided for under Subchapter VIII, Chapter 99, HTSUS, must be available when the retroactive claim is made. In addition, no refund will apply in the case of additional duties paid as safeguard measures under Chapter 99 of the HTSUS.

Dated: May 22, 2002.

BONNI G. TISCHLER,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, May 28, 2002 (67 FR 36960)]

TREASURY ADVISORY COMMITTEE ON
COMMERCIAL OPERATIONS OF THE U.S. CUSTOMS SERVICE

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the quarterly meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC), and the provisional meeting agenda.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, June 14, 2002, starting at 9:00 a.m., at the Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC. The meeting will be held in the Secretary's Conference Room, Rm. 3325, for approximately four hours.

FOR FURTHER INFORMATION, CONTACT: Gordana S. Earp, Director, Tariff and Trade Affairs (Enforcement), Office of the Under Secretary (Enforcement), Telephone: (202) 622-0336.

At this meeting, the Advisory Committee is expected to pursue the following draft agenda. The agenda may be modified prior to the meeting.

Agenda:

I. Update on Supply Chain Security and Customs-Trade Partnership Against Terrorism ("C-TPAT");

II. Other Issues:

- A. ACE/ITDS Update;
- B. Report of the Customs Office of Rulings and Regulations;
- C. Update on Focused Assessment and Importer Self-Assessment Programs;
- D. Treasury Data Study and G-7 Data Uniformity Initiative;
- E. Customs Uniformity Initiative;

III. Administrative Issues:

A. Status of 2001 COAC Annual Report to the Congress;

B. Next Meeting

SUPPLEMENTARY INFORMATION: The Advisory Committee on Commercial Operations of the United States Customs Service ("COAC") was created by Congress in Public Law 100-203, Title IX, Section 9503(c), December 22, 1987, 100 Stat. 1330-381 (19 U.S.C. 2071 note). The Committee advises the Secretary of the Treasury and reports to Congress any recommendations on matters involving the commercial operations of the United States Customs Service. By statute, the Secretary of the Treasury appoints the members of this Committee, and the Assistant Secretary of the Treasury for Enforcement presides over the meetings.

The June 14, 2002 meeting of the Committee is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to address the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622-0220 or Helen Belt at (202) 622-0230.

Dated: May 21, 2002.

TIMOTHY E. SKUD,
*Deputy Assistant Secretary,
Regulatory, Tariff, and Trade.*

RECEIPT OF DOMESTIC INTERESTED PARTY PETITION CONCERNING TARIFF CLASSIFICATION OF TEXTILE SLIPPERS

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party requesting the reclassification of certain imported slippers with uppers of textile materials and outer soles that consist of durable rubber/plastic, the surface of which is covered with a thin layer of textile material. Customs has classified this footwear under subheading 6405.20.90, Harmonized Tariff Schedule of the United States (HTSUS), which has a column one rate of duty of 12.5 percent *ad valorem*. The petitioner contends that the footwear should be classified under subheading 6404.19.35, HTSUS, which has a column one rate of duty of 37.5 percent *ad valorem*. The petitioner argues that the textile material adhered to the rubber/plastic is not plausible soling material,

does not come into contact with the ground over the life-span of the slipper and constitutes a disguise or artifice. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before July 22, 2002.

ADDRESS: Written comments may be addressed to, and inspected at, the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Room 3.4A, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joe Freeman Shankle, Textiles Branch (202) 927-2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document concerns the tariff classification of certain imported footwear. The imported footwear is a slipper that has an upper of textile material and an outer sole composed of unit-molded rubber/plastics with nubs measuring $\frac{1}{4}$ inch in diameter evenly spaced across its surface, over which is adhered a thin layer of textile fabric.

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of an American manufacturer of slippers, requesting that Customs reclassify the imported slippers. Customs has classified this footwear under subheading 6405.20.90, Harmonized Tariff Schedule of the United States (HTSUS), as "Other footwear: With uppers of textile materials: Other" which has a column one rate of duty of 12.5 percent *ad valorem*. The petitioner contends that the footwear should be classified under subheading 6404.19.35, HTSUS, as "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other," which has a column one rate of duty of 37.5 percent *ad valorem*.

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System, Explanatory Notes (EN), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope

of the headings and the GRI. The EN, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Classification of footwear is essentially based upon the composition of the outer soles and uppers. Determinations regarding the constituent material of the outer sole of footwear are governed by Note 4(b), Chapter 64, HTSUS, which states that:

The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

General EN (C) to Chapter 64 states that:

The term "outer sole" as used in headings 64.01 to 64.05 means that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments which partly cover the sole (see Note 4(b) to this Chapter).

In New York Ruling Letter (NY) G89205, dated April 19, 2001, and NY G89960, dated April 19, 2001, Customs took the position that even though the purpose of the textile material on the surface of the soles was not explained, it is plausible soling material for footwear of this type, i.e., for indoor use exclusively. The textile material was found to have the greatest surface area in contact with the ground when the slipper is in use. In accordance with Note 4(b) to Chapter 64, HTSUS and with the guidance of the EN to Chapter 64, Customs classified the slippers under subheading 6405.20.90, HTSUS, as having outer soles of material other than rubber, plastics, leather or composition leather.

The petitioner claims that the footwear should be classified in subheading 6404.19.35, HTSUS, as footwear having rubber or plastic outer soles. The petitioner asserts that the textile material applied to the sole of the slipper is not plausible soling material and constitutes impermissible tariff engineering.

The petitioner conducted a "wear test" and an "abrasion test" to determine the durability of the textile material that comes into contact with the ground. The results of the wear test revealed that the textile material frayed and wore off of the nubs located at the ball and heel of the slipper after 30 days of normal use. The abrasion test revealed that the textile material first began to wear off after 10 cycles. After 100 cycles, approximately 60% of the textile material was worn off. After 200 cycles, approximately 90% of the textile material was worn off. In contrast, the rubber/plastic that is covered by the textile material showed minimal wear when subjected to 200 cycles.

The petitioner relies upon the EN to Chapter 64 which state that the outer sole "means that part of the footwear * * * which, *when in use*, is in contact with the ground." (Emphasis in original). The petitioner asserts that because the textile material wears off in a relatively short period of time, the constituent material that is in contact with the ground over the life of the slippers is the rubber/plastic, not the textile material.

The petitioner further contends that the textile material overlying the rubber/plastic soles should be excluded from consideration when determining the constituent material of the outer sole. This argument is based on that portion of the EN to Chapter 64, restated here:

* * * In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments which partly cover the sole. * * *

The petitioner maintains that the thin layer of textile material overlying the "rubber soles" of the slippers is akin to an accessory or reinforcement and, therefore, cannot be considered as the constituent material of the outer sole.

The petitioner also argues that the textile material on the outer soles of the slippers is not genuine soling material, but is an "artifice" that must be disregarded. In support of this argument, the petitioner cites to *United States v. Citroen*, 223 U.S. 407 (1911), for the proposition that although articles are to be classified in the condition in which they are imported, this does not mean that a rate of duty can be escaped by resort to disguise or artifice. The petitioner also cites *Heartland By-Products, Inc. v. United States*, 264 F.3d 1126 (Fed. Cir. 2001), in support of the argument that the application of the textile material to the rubber/plastic sole is disguise and artifice. The petitioner further states that it is the rubber/plastic that gives the sole its rigidity and strength, thereby imparting the commercial identity of the slippers. Despite the adherence of the textile material, it is said that the footwear "is not commercially considered a fabric soled slipper." Lastly, the petitioner contends that the textile material does not contribute to the salability or functionality of the slippers and should be ignored for classification purposes.

Comments

Pursuant to Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on the matter, Customs invites written comments on the petition from interested parties.

The domestic party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552, 1.4, Treasury Department Regulations (31 CFR 1.4), and Section 103.11(b), Customs Regulations (19 CFR 103.11(b))), between the hours of 9:00 a.m. to 4:30 p.m. on regular business days, at the U.S. Customs Service, Office of Regulations and Rulings, Commercial Ruling Division, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

Authority

This notice is published in accordance with Section 175.21(a), Customs Regulations (19 CFR 175.21(a)), 19 U.S.C. 1516.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: May 17, 2002.

TIMOTHY E. SKUD,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 23, 2002 (67 FR 36301)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 22, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A
TOTE BAG

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of a tote bag.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a tote bag. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before July 5, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 927-1735.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.

103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification of a tote bag. Although in this notice Customs is specifically referring to one ruling letter, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with the classification of substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In New York Ruling Letter (NY) H86082, dated January 7, 2002, the Customs Service classified a tote bag under subheading 4202.92.3005, HTSUSA, which provides for, in pertinent part, travel, sports and simi-

lar bags, with outer surface of textile materials, of paper yarn. NY H86082 is set forth as "Attachment A" to this document.

After review of NY H86082, Customs has determined that the proper classification for the tote bag is subheading 4602.10.2920, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Luggage, handbags and flatgoods, whether or not lined: Other, Handbags." Proposed Headquarters Ruling Letter (HQ) 965382 revoking NY H86082 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H86082, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965382, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 17, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 7, 2002.
CLA-2-42:RR-NC:TA:341 H86082
Category: Classification
Tariff No. 4202.92.3005

MR. WILLIAM ORTIZ
S.J. STILE ASSOCIATES LTD.
181 South Franklin Ave.
Valley Stream, NY 11581

Re: The tariff classification of a tote bag of paper yarn from China.

DEAR MR. ORTIZ:

In your letter dated December 6, 2001, on behalf of Wathne Ltd., you requested a tariff classification ruling for a tote bag of paper yarn.

The sample submitted is identified as the "Tyler Group" style. The item is a double handle tote bag designed to contain personal effects and accessories during travel. It is manufactured with an exterior surface of twisted paper yarns. The interior is textile lined and features a zippered back wall pocket. It measures approximately 20"(W) x 11"(H) with a 6" base. The top center of the bag is secured by means of a tie ribbon-like closure. Your sample is being returned as requested.

The applicable subheading for the tote bag will be 4202.92.3005, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags,

with outer surface of textile materials, other, other, of paper yarn. The rate of duty will be 18.1 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 646-733-3041.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965382 ttd
Category: Classification
Tariff No. 4602.10.2920

MR. WILLIAM ORTIZ, EXECUTIVE VICE PRESIDENT
S.J. STILE ASSOCIATES LTD.
181 South Franklin Ave.
Valley Stream, NY 11581

Re: Revocation of New York Ruling Letter H86082, dated January 7, 2002; Tote Bag; Paper Yarn.

DEAR MR. ORTIZ:

This is in response to your letter, dated January 16, 2002, filed on behalf of Wathne Ltd., requesting reconsideration, in part, of New York Ruling Letter (NY) H86082, dated January 7, 2002, regarding classification of a tote bag under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of NY H86082, Customs has determined that the classification of the tote bag in subheading 4202.92.3005, HTSUSA, is incorrect. For the reasons that follow, this ruling revokes NY H86082.

Facts:

In NY H86082, the tote bag under consideration was classified in subheading 4202.92.3005, HTSUSA, which provides for travel, sports and similar bags, with outer surface of textile materials, of paper yarn. The article at issue is identified as the "Tyler Group" style. The item is a double handled ladies tote bag designed to contain personal effects and accessories during travel. The body of the bag is manufactured of natural plaited straw material that is wholly covered on the exterior with woven paper strips, which are folded longitudinally. The interior is textile lined and features a zippered back wall pocket. It measures approximately 16 inches in width by 11 inches in height with a 6 inch base. The top center of the bag is secured by means of a tie ribbon-like closure.

In your submission of January 16, 2002, you suggest classification of the subject merchandise in heading 4602.10.2920, HTSUSA.

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes * * *." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Subheading 4202.92, HTSUSA, provides in part for other articles not more specifically provided for in the preceding subheadings of 4202, HTSUSA, with outer surfaces of sheeting of plastic or of textile materials. Included within subheading 4202.92, HTSUSA, are travel, sports and similar bags. The exterior of the subject tote bag is not "of sheeting of plastic," therefore, its outer surface must be made of textile material to fall within subheading 4202.92, HTSUSA. Accordingly, to be classified as a bag with an outer surface of textile material under subheading 4202.92, the woven paper tote bag at issue must be constructed of paper yarn within Section XI, HTSUSA, which covers textiles and textile articles. Pursuant to Section XI, the classification of paper yarns is governed by heading 5308, HTSUSA, which expressly provides for, *inter alia*, paper yarn. The EN to heading 5308 explain that paper yarn is obtained by twisting or rolling lengthwise strips of moist paper. The EN further state that the heading does not cover paper simply folded one or more times lengthwise.

In Headquarters Ruling Letter (HQ) 957758, dated June 23, 1995, Customs classified a handbag constructed of woven paper yarns in subheading 4202.22.8060, HTSUSA. In that ruling, we distinguished between paper yarn and paper strips, finding that paper yarn is made by either twisting or rolling. Similarly, in HQ 080832, dated March 14, 1989, we classified certain luggage items mainly composed of paper yarns and man-made fiber yarns under subheading 4202.12.8080, as suitcases with outer surface of textile materials.

In NY H86082, when the merchandise at issue was initially examined, Customs believed that the subject tote bag was made of paper yarn, and therefore classified the bag in subheading 4202.92, HTSUSA, a provision for travel, sports and similar bags with outer surface of textile materials. After further review, we find that the subject bag, unlike the handbag in HQ 957758, is not constructed of paper yarn. Rather, the tote bag under consideration is composed of paper strips that are folded lengthwise and then woven into the shape of the bag. There is no evidence that the instant strips of paper are twisted or rolled. As the subject paper strips have been folded longitudinally and not twisted or rolled prior to being woven, the tote bag is not made of paper yarn in the manner described by the EN to heading 5308, HTSUSA. Accordingly, the subject item is not properly classified in subheading 4202.92, HTSUSA, the provision for travel, sports and similar bags with outer surface of textile materials.

Having precluded classification in subheading 4202.92, heading 4602, HTSUSA, covers, among other things, basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601. Heading 4601, HTSUSA, provides for plaits and similar products of plaiting materials, whether or not assembled into strips, plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens). Note 1 to Chapter 46, HTSUSA, describes "plaiting materials" as materials in a state or form suitable for plaiting, interlacing or similar processes, including strips of paper. The EN to heading 4601 provide in pertinent part that goods covered under heading 4601, HTSUSA, include plaiting materials formed of strands woven together in the manner of warp and weft fabrics.

In HQ 082996, dated August 22, 1989, Customs ruled that a plaited paper handbag, constructed of strips of paper woven together in a warp and weft manner, was properly classified in heading 4602, HTSUSA, as an other article made up from goods of heading 4601. In this case, the strips of paper comprising the outer surface of the tote bag, like the paper strips in HQ 082996, are plaiting materials as defined in Note 1 to Chapter 46, HTSUSA, as they are suitable for weaving or plaiting the shape of the subject bag. Moreover, the tote bag under consideration, like the handbag in HQ 082996, is an other article made up from goods of heading 4601 and therefore is properly classified in heading 4602, HTSUSA.

As the subject woven paper tote bag is made of plaited paper strips, it is classified under subheading 4602.10.2920, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of

heading 4601; articles of loofah: Of vegetable materials: Luggage, handbags and flatgoods, whether or not lined: Other, Handbags."

Holding:

Based on the foregoing, the subject merchandise is classified in subheading 4602.10.2920, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Luggage, handbags and flatgoods, whether or not lined: Other, Handbags." The applicable rate of duty is 5.3 percent *ad valorem*.

NY H86082, dated January 7, 2002, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

**PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF PLASTIC GLITTER**

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to the classification of plastic glitter.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of plastic glitter. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before July 5, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch: (202) 927-2379. Effective June 8, 2002, call (202) 572-8824.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of plastic glitter. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) E89859, dated December 3, 1999, (Attachment A); this notice covers any rulings on this merchandise which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice that is contrary to the position set forth in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY E89859, Customs classified a vial of metallized plastic glitter in subheading 5601.30.0000, HTSUSA, which provides, in pertinent part, for textile flock and dust and mill neps. Based on our analysis of the scope of the terms of subheadings 5601.30.0000, HTSUSA, and 3926.90.9880 HTSUSA, the Legal Notes, and the Explanatory Notes, the plastic glitter of the type discussed herein, is classifiable under subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY E89859 and any other ruling not specifically identified, that is contrary to the determination set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter 965632 (attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 17, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 3, 1999.
CLA-2-56:RR:NC:TA: 351 E89859
Category: Classification
Tariff No. 5601.30.0000

MR. JOSEPH HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: The tariff classification of glitter from China.

DEAR MR. HOFFACKER:

In your letter dated November 5, 1999, you requested a tariff classification ruling on behalf of consolidated Stores, Inc.

You submitted a small plastic vial of glitter. In your submission you stated that the glitter is made from sheets of metallized plastic which is cut into strips and further cut into tiny pieces.

The applicable subheading for the glitter will be 5601.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for textile flock and dust and mill neps. The rate of duty will be 2.4 percent ad valorem. In calendar year 2000, the rate of duty will be 2 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Camille Ferraro at 212-637-7086.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965632 JFS
Category: Classification
Tariff No. 3926.90.9880

MR. JOSEPH HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: Classification of Plastic Glitter; Revocation of NY E89859.

DEAR MR. HOFFACKER:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) E89859, dated December 3, 1999, issued to you on behalf of your client, Consolidated Stores, Inc., concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of plastic glitter. After review of NY E89859, it has been determined that the classification of the plastic glitter in subheading 5601.30.0000, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E89859.

Facts:

A vial of plastic glitter was submitted for consideration in NY E89859. The glitter was described as being "made from sheets of metallized plastic which is cut into strips and further cut into tiny pieces."

Issue:

What is the proper classification of plastic glitter.

Law and Analysis

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

In NY E89859, Customs classified the plastic glitter as a textile material in subheading 5601.30.0000, HTSUSA, which provides, in pertinent part, for textile flock and dust and mill neps. The rationale for classifying the glitter as flock was that during the manufacturing process the plastic sheeting had been reduced to plastic strip. If plastic strip has an apparent width of 5 mm or less, it is considered a textile for purposes of Section XI of the tariff. See, Note 1(g) to Section XI. Customs believes that the classification determination of glitter is not solely controlled by the fact that the plastic sheeting from which the glitter was derived had, at one point during the manufacturing process, been reduced to plastic strip. Glitter, as imported, consists of small particles or flakes of plastic and is classified as a plastic material of chapter 39.

At the subheading level, plastic glitter is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other: The general column one rate of duty is 5.3 percent *ad valorem*."

Holding:

NY E89859 is revoked. Plastic glitter is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other: The general column one rate of duty is 5.3 percent *ad valorem*."

JOHN DURANT,

Director,

Commercial Rulings Division.

REVOCATION OF RULING LETTER AND OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF DESMODUR
IL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of Desmondur IL.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling concerning the tariff classification of Desmondur IL, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocations was published on April 17, 2002, in Volume 36, Number 16, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326. After June 8, 2002, call (202) 572-8784.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the April 17, 2002, CUSTOMS BULLETIN, Volume 36, Number 16, proposing to revoke New York Ruling Letter (NY) 850109, dated May 1, 1990, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY 850109, Customs classified Desmodur IL in subheading 3909.30.00, HTSUS, which provides for "[A]mino-resins, phenolic resins and polyurethanes, in primary forms: [O]ther amino-resins." It is now Customs position that this article was not correctly classified in subheading 3909.30.00, HTSUS, because Desmodur IL is not an amino resin, a polyurethane or a resol. Rather, Desmodur IL is a product specified in note 3 to chapter 39 as an "other prepolymer" classifiable in heading 3911, HTSUS.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not iden-

tified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY 850109 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965435, set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: May 20, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 20, 2002.

CLA-2 RR:CR:GC 965435 AM
Category: Classification
Tariff No. 3911.90.45

MR. KENNETH G. WEIGEL
MR. DAVID P. SANDERS
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, DC 20005

Re: NY 850109: Desmodur IL.

DEAR MR. WEIGEL AND MR. SANDERS:

This is in reference to New York Ruling Letter (NY) 850109, issued to Mobay Corporation, by Customs National Commodity Specialist Division, New York, on May 1, 1990, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Desmodur IL. We have reviewed the decision in NY 850109, and have determined that the classification set forth therein, is in error. This ruling revokes NY 850109.

In your electronic message of March 27, 2002, you state that "Mobay was merged out of existence in Miles, Inc., which was then merged out of existence into Bayer Corp." We are therefore addressing this ruling to you as counsel for Bayer Corporation.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 850109 was published on April 17, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 16. No comments were received in response to this notice.

Facts:

Desmodur IL is formed by the condensation of diisocyanates. It is described in NY 850109 as an aromatic polyisocyanate based on polymeric toluene diisocyanate (TDI) dis-

solved in butyl acetate. The average number of repeating monomer units is seven. After importation, Desmodur IL is reacted with either a polyether or a polyester polyol to form polyurethane coatings for wood, metal and paper substrates.

Customs Laboratory Report 2-1990-30613 dated April 3, 1990, states "[T]he sample, a clear colorless liquid, is a solution of 1,3,5-bis(3-isocyanato-4-methylphenyl)-2,4,6-triazine(1H,3H,5H)-trione (56% by weight) in an organic solvent (butyl acetate). According to information received, Desmodur IL can be combined with polyesters to formulate fast drying 2 component polyurethane coatings. In our opinion, the sample is a prepolymer for polyurethane resins."

In NY 850109, Customs classified the merchandise in subheading 3909.30.00, HTSUS, which provides for "[A]mino-resins, phenolic resins and polyurethanes, in primary forms: [O]ther amino-resins."

Issue:

What is the classification of Desmodur IL under the HTSUS?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS provisions are under consideration:

3909	Amino-resins, phenolic resins and polyurethanes, in primary forms:
3909.30.00	Other amino-resins
	* * * * *
3911	Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms:
3911.90	Other: [than Petroleum resins, coumarone, indene or coumarone-indene resins; polyterpenes]
	Other: [than elastomeric]
	Containing monomer units which are aromatic or modified aromatic, or which are obtained derived or manufactured in whole or in part therefrom:
	Thermosetting:
3911.90.45	Other: [than 1,1'-Bis(methylenedi-4,1-phenylene)-1H-pyrrole-2,5-dione, copolymer with 4,4'-methylenebis(benzeneamine); and Hydrocarbon novolac cyanate ester]

Chapter 39, note 3, HTSUS, states the following:

Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories:

- (a) Liquid synthetic polyolefins of which less than 60 percent by volume distills at 300°C, after conversion to 1,013 millibars when a reduced-pressure distillation method is used (headings 3901 and 3902);
- (b) Resins, not highly polymerized, of the coumarone-indene type (heading 3911);
- (c) Other synthetic polymers with an average of at least five monomer units;
- (d) Silicones (heading 3910);
- (e) Resols (heading 3909) and other prepolymers.

EN 39.09 states, in pertinent part, the following:

This heading covers:

(1) Amino-resins

These are formed by the condensation of amines or amides with aldehydes (formaldehyde, furfuraldehyde, etc.). The most important are urea resins (for example, urea-formaldehyde), thiourea resins (for example, thiourea-formaldehyde), melamine resins (for example, melamine-formaldehyde) and aniline resins (for example, aniline-formaldehyde).

Polyamine resins, such as poly(ethyleneamines), are not amino-resins and fall in heading 39.11 when complying with the requirements of Note 3 to this Chapter.

(3) Polyurethanes

This class includes all polymers produced by the reaction of polyfunctional isocyanates with polyhydroxy compounds, such as, castor oil, butane-1,4-diol, polyether polyols, polyester polyols. Polyurethanes exist in various forms, of which the most important are the foams, elastomers, and coatings. They are also used as adhesives, moulding compounds and fibres.

Desmodur IL is not an amino resin formed by the condensation of amines or amides with aldehydes. The repeating unit portion of Desmodur IL is polymerized by isocyanate groups. Subheading 3909.50.50, HTSUS, provides for other polyurethanes. Polyurethanes include all polymers produced by the reaction of polyfunctional isocyanates with polyhydroxy compounds. Only after importation will the product, a polyfunctional isocyanate, be reacted with a polyether or polyol to form polyurethane. Desmodur IL as imported is a prepolymer for making polyurethane resins and is not a polyurethane. Chapter 39, Note 3(e) specifies that resols are classified in heading 3909, HTSUS, but that other prepolymers may be classified in headings 3901 through 3911, HTSUS. Desmodur IL is not a resol. Hence, Desmodur IL is a product specified in note 3 to chapter 39 as a prepolymer and by the terms of those headings, falls to be classified in heading 3911, HTSUS.

Holding:

Desmodur IL is classified in subheading 3911.90.45, HTSUS, the provision for "[P]etroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: [O]ther: [O]ther: [C]ontaining monomer units which are aromatic or modified aromatic, or which are obtained derived or manufactured in whole or in part therefrom: [T]hermosetting: [O]ther."

Effect on Other Rulings:

NY 850109, dated May 1, 1990, is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARKVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF RULING LETTER AND
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF THE CONTAINER COMPONENTS OF EMERGENCY
ROADSIDE AUTOMOBILE KITS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the tariff classification of the container components of emergency roadside automobile kits.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is proposing to modify a ruling letter related to the classification of the container components of emergency roadside automobile kits under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice.

DATE: Comments must be received on or before July 5, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textile Branch (202) 927-2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility"**. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for us-

ing reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter relating to the classification of a nylon bag component of an emergency roadside automobile kit. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) D88516, dated March 31, 1999, this notice covers any rulings on such merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the issues subject to this notice, should advise Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during the notice period. An importer's failure to advise Customs of the substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D88516, dated March 31, 1999, Customs classified an *Ultimate Auto Safety Kit* emergency automobile roadside kit's nylon bag component pursuant to GRI 5(a), which resulted in the merchandise being classified with the contents and the value being prorated over the contents. For classification purposes, the items included in the kit were not considered to comprise a set. Customs has reviewed the ruling and, with regard to the classification of this bag, has determined that the ruling is in error. Accordingly, we intend to modify NY D88516, as we find that the *Ultimate Auto Safety Kit*'s nylon bag component is classifiable pursuant to GRI 1 within subheading 4202.92.9026, HTSUSA, which provides for: "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, ciga-

rette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: Other: Of man-made fibers."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY D88516 (see "Attachment A" to this document) and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963598 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 17, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

New York, NY, March 31, 1999.

CLA-2-39:RR:NC:MM:101 D88516

Category: Classification

Tariff No. 3006.50.0000, 3406.00.0000, 3824.90.9050,
3920.20.0000, 3921.12.5000, 3926.20.9050,
4818.20.0020, 4911.99.8000, 6116.92.8080,
8506.80.0000, 8513.10.2000, 8544.41.8000

MR. JIM WICKSTEAD,
SENIOR CONSULTANT,
PBB GLOBAL LOGISTICS
434 Delaware Avenue
Buffalo, NY 14202

Re: The tariff classification of an Ultimate Auto Safety Kit from Canada.

DEAR MR. WICKSTEAD:

In your letter dated February 12, 1999, on behalf of your client, Micris One, Inc., you requested a ruling on the tariff classification of an Ultimate Auto Safety Kit (Ultimate Kit) and the country of origin requirements for an imported first aid kit contained in the Safety Kit.

The sample submitted, identified as a Ultimate Auto Safety Kit (Ultimate Kit) consists of goods either made in Canada or are imported into Canada from the United States or China. These products are placed into a PVC bag. The Kit consists of:

10x6 inch Foam Pad—a rectangular sheet of foamed polyvinyl chloride;
Flashlight;
Two Batteries (1.5 volt D cells);

First Aid Kit—consisting of a Poly-Bag, Adhesive strips, Benzalkonium chloride antiseptic towelettes, Sting relief medicated pads, Gauze pad, "Nice Clean" towelettes, First Aid instruction card, and a Survival instruction card;

Emergency Blanket—composed of plastic sheet coated with aluminum;

Candles;

Matches;

"SOS" Banner—composed of 3.0mm thickness polyethylene;

Emergency Rain Poncho—composed of .02mm thickness polyethylene;

Safety Vest—composed of 0.1mm thickness polyvinyl chloride;

Gloves of 60% cotton and 40% polyester knit fabric;

Aerosol Tire Sealant consisting of water, 40–60 percent by weight; tetrafluoroethane, 20–30 percent; emulsifier, 15–20 percent; ethylene glycol, 1–5 percent; surfactants, 1–5 percent; and a corrosion inhibitor mixture, under one percent;

Flare;

Shop Cloth;

Booster Cables.

The Foam Pads, Poly Bag, Adhesive Strips, "Nice Clean" Towelettes, First Aid instruction card, Emergency Blanket, Survival instruction card, "SOS" Banner, Gloves of 60% cotton and 40% polyester, Aerosol Tire Sealant, and Shop Cloth are made in Canada.

The Benzalkonium chloride antiseptic towelettes, Sting relief medicated pads, Gauze pad, Matches, and Flare are manufactured in the United States.

The PVC bag, Flashlight, Batteries, Candles, Emergency Poncho, Safety Vest, and Booster Cables are made in China.

The PVC bag into which the items of the Ultimate Kit are placed is made of Nylon, not PVC, per the cardboard packaging listing the Kit's contents. This bag is a container as described in GRI-5(a), therefore it is classified with the contents. The value of the case is prorated over the contents. For classification purposes the items are not considered a set and will be classified accordingly.

The applicable subheading for the First Aid Kit will be 3006.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Pharmaceutical products including first aid boxes and kits. The rate of duty will be Free.

The applicable subheading for the candles will be 3406.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Candles, tapers and the like. The rate of duty will be Free.

The Department of Commerce has determined that petroleum wax candles in the following shapes: tapers, spirals, and straight sided dinner candles; rounds columns, pillars, votives, and various wax-filled containers are within the scope of the antidumping duty order on petroleum wax candles from China. In our opinion the sample is within the scope of the antidumping duty order on petroleum wax candles from China.

The applicable subheading for the Emergency Tire Sealant will be 3824.90.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for Prepared binders for foundry molds or cores, chemical products and preparations of the chemical or allied industries * * *, not elsewhere specified or included * * *: Other: Other: Other: Other: Other * * * Other. The rate of duty will be 5% ad valorem.

The applicable subheading for the Emergency Blanket will be 3920.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other plates, sheets, film, foil, strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: Of polymers of propylene. The rate of duty will be 4.2% ad valorem.

The applicable subheading for the PVC Foam Pad will be 3921.12.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other plates, sheets, film, foil, strip, of plastics: Cellular: of polymers of vinyl chloride. The rate of duty will be 6.5% ad valorem.

The applicable subheading for the Emergency Rain Poncho will be 3926.20.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories: Other: Other * * * Other. The rate of duty will be 5% ad valorem.

The applicable subheading for the PVC Safety Vest will be 3926.20.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories: Other: Other * * * Other. The PVC Safety Vest is considered a clothing accessory. The rate of duty will be 5% ad valorem.

The applicable subheading for the Shop Cloth will be 4818.20.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for Towels of paper. The rate of duty will be 2.6% ad valorem.

The applicable subheading for the SOS Banner will be 4911.99.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other printed matter, including printed pictures and photographs: Other: Other: Other * * * Other. The rate of duty will be 2.4% ad valorem.

The applicable subheading for the Cotton Knit gloves will be 6116.92.8800, Harmonized Tariff Schedule of the United States (HTS), which provides for Gloves, mittens and mitts, knitted or crocheted: Other: Of cotton: Other: Other. The rate of duty will be 9.7% ad valorem.

The applicable subheading for the D Cell Batteries will be 8506.80.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Primary cells and primary batteries; parts thereof: Other. The rate of duty will be 2.7% ad valorem.

The applicable subheading for the Flashlight will be 8513.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for Portable electric lamps designed to function by their own source of energy * * *: Lamps: Flashlights. The rate of duty will be 12.5% ad valorem.

The applicable subheading for the Booster Cables will be 8544.41.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for Insulated wire, cable and other insulated electric conductors, whether or not fitted with connectors * * *: Other electric conductors, for a voltage not exceeding 80 V: Fitted with connectors: Other. The rate of duty will be 2.6% ad valorem.

The applicable subheading for the Matches and Flare will be 9801.00.10, Harmonized Tariff Schedule of the United States (HTS), which provides for the free entry of products of the U.S. that are exported and returned without having been advanced in value or improved in condition by any process or manufacture or other means while abroad, provided the documentary requirements of section 10.1, Customs Regulations (19 C.F.R. §10.1) are met.

Applicability of Country of Origin Requirements:

This office recently issued New York Ruling D88024 in response to your letter dated February 5, 1999, on behalf of your client, Micris One, Inc. The ruling addressed the classification and country of origin marking for imported first aid kits.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:TE 963598 TMF
Category: Classification
Tariff No. 4202.92.9026

MR. JIM WICKSTEAD, SENIOR CONSULTANT
PBB GLOBAL LOGISTICS
434 Delaware Avenue
Buffalo, NY 14202

Re: Modification of NY D88516; *Ultimate Auto Safety Kit*; emergency roadside automobile kits.

DEAR MR. WICKSTEAD:

In New York Ruling Letter (NY) D88516, dated March 31, 1999, issued to you on behalf of your client, Micris One, Inc., you were advised that the nylon bag which contained the items of the *Ultimate Auto Safety Kit*, was classified with its contents as a container described in GRI 5(a), and its value prorated over the contents. We have reviewed NY D88516 and have found it to be in error. Therefore, this ruling modifies NY D88516.

Facts:

The article in question is the small black bag component of the *Ultimate Auto Safety Kit*. The bag was made in China. In NY D88516, dated March 31, 1999, the bag is described initially as a PVC bag. However, the ruling noted that the cardboard packaging listed the bag component's composition as being of nylon fabric. The bag has a rectangular shape and measures 10.5 inches by 6 inches by 4.5 inches. It has a zippered opening along three sides and a fabric-carrying handle. The bag has only one main interior compartment.

The bag is made to store and carry the contents of the *Ultimate Auto Safety Kit*, an emergency roadside automobile kit, which includes: two 10 inch by 6 inch foam pads; a flashlight; two batteries (D size, 1.5 volt); a first aid kit; an emergency heat-reflective blanket; candles; matches; an "SOS" banner; an emergency rain poncho; a safety vest; a pair of polycotton knit gloves; aerosol tire sealant; a flare; a shop cloth; and booster cables.

In NY D88516, Customs classified the nylon bag component of the *Ultimate Auto Safety Kit* pursuant to GRI 5(a), with its contents (which were found not to comprise a set) and its value was prorated over the contents.

Issue:

Whether the nylon bag component of the *Ultimate Auto Safety Kit* is classified pursuant to GRI 5(a) Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

The classification of the bag components of emergency roadside automobile kits was addressed previously in HQ 964937, dated March 19, 2002 and HQ 965021, dated March 19, 2002. In both rulings, the bag components were described as soft-sided plastic, reinforced, zippered bags with straps. Customs determined that the kits were not sets pursuant to GRI 3(b) and classified the bag components individually in subheading 4202.92.90, HTSUSA.

The instant bag component is made of sturdy nylon fabric, and has straps, zippers, and one main compartment to contain emergency roadside assistance articles. The bag is substantially similar in function to the merchandise addressed in the aforementioned rulings and is classified accordingly in subheading 4202.92.9026, HTSUSA.

Although certain containers may be classified with the articles they are designed to hold, we do not find the instant bag to be a container pursuant to GRI 5(a), HTSUSA, which states:

Camera cases, musical instruments, gun cases, drawing instrument cases, necklace cases and similar containers, specifically shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.

The intent of the language of GRI 5(a) and the ENs to GRI 5(a) is that a container is specifically shaped or fitted for, in this case, the contents it holds."¹ The nylon bag contains one main compartment which is not specially shaped or fitted to hold its contents. Thus, the instant bag does not satisfy the requirements of GRI 5(a), and it is separately classified from its contents pursuant to GRI 1.

Holding:

NY D88516, dated March 31, 1999, is hereby modified. The nylon bag component of the *Ultimate Auto Safety* is classified in subheading 4202.92.9026, HTSUSA, textile category 670, which provides for: "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: Other: Of man-made fibers." The general column one duty rate is 18.1 percent *ad valorem*. There are no applicable quota/visa requirements for the products of World Trade Organization ("WTO") members. The textile category number above applies to merchandise produced in non-WTO countries.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

¹ The EN(I) to GRI 5(a) states: "This rule shall be taken to cover only those containers which "are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended."

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MARBLE SLABS PREDRILLED WITH A HOLE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter and treatment relating to the classification of marble trophy bases predrilled with a hole.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling concerning the tariff classification of marble trophy bases predrilled with a hole, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocations was published on April 10, 2002, in Volume 36, Number 15, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326. After June 8, 2002, call (202) 572-8784.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the April 10, 2002, CUSTOMS BULLETIN, Volume 36, Number 15, proposing to modify New York Ruling Letter (NY) F88762, dated June 29, 2000, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY F88762, Customs ruled that marble trophy bases predrilled with a hole were classified in subheading 6802.90.05, HTSUS, as marble slabs. It is now Customs position that this article was not correctly classified in subheading 6802.90.05, HTSUS, because it is worked beyond the condition specified for a slab.

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is modifying NY F88762 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964806, set forth as attachment "A". Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: May 15, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 15, 2002.

CLA-2 RR:CR:GC 964806AM
Category: Classification
Tariff No. 6802.91.15

MR. VINCENT CARIELLO
FREEMAN PRODUCTS
ELMWOOD CORPORATE PARK
487 Edward H. Ross Dr.
Elmwood Park, NJ 07407-3118

Re: Marble trophy bases predrilled with a hole.

DEAR MR. CARIELLO:

This is in reference to New York Ruling Letter (NY) F88762 issued to you on June 29, 2000, by the Director, Customs National Commodity Specialist Division, concerning the classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of several items. One of the items classified in that ruling was marble trophy bases predrilled with a hole. This ruling modifies NY F88762 with respect to the classification of marble trophy bases predrilled with a hole.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY F80626 was published on April 10, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 15. No comments were received in response to this notice.

Facts:

Customs Laboratory Report NY20010780, dated June 28, 2001, states the following: "the sample is an off white with grey spots texture surface polished stone base. It measures approximately 12 cm X 6.5 cm x 1.93 cm thick. It has two holes 0.8 cm in diameter. It is composed of non agglomerated marble."

Issue:

What is the classification of marble trophy bases predrilled with a hole?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

There is no question that heading 6802, HTSUS, is the correct heading for classification of the instant merchandise. At GRI 6, the following subheadings are relevant to the classification of this product:

6802

Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate):

Other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface:

6802.91	Marble, travertine and alabaster:
	Marble:
6802.91.05	Slabs
6802.91.15	Other

Additional U.S. Note 1, Chapter 68, HTSUS, states, in pertinent part, the following: "[F]or the purposes of heading 6802, the term 'slabs' embraces flat stone pieces, not over 5.1 cm in thickness, having a facial area of 25.8 cm² or more, the edges of which have not been beveled, rounded or otherwise processed except such processing as may be needed to facilitate installation as tiling or veneering in building construction."

The only reference to "slabs" in heading 6802 is in subheading 6802.91.05, in which marble in the form of "slabs" is distinguished from marble in other forms. The purpose of Additional U.S. Note 1, Chapter 68, is clearly to distinguish between marble in subheadings 6802.91.05 and 6802.91.15 on the basis of the degree of working or processing to which the articles have been subjected.

Here, the slabs have been further worked by being cut with a hole. Hence, they are "other" than marble slabs. Furthermore, slabs not predrilled with a hole but beveled more than 3/32 of an inch are also precluded from subheading 6802.91.05 under Additional U.S. note 1 to Chapter 68. See HQ 951047, dated September 17, 1992.

Holding:

Marble trophy bases predrilled with a hole are classified in subheading 6802.91.15, HTSUS, as "[W]orked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate): [O]ther monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface: [M]arble, travertine and alabaster: [M]arble: [O]ther."

Effect on Other Rulings:

NY F88762 is modified with respect to the classification of marble trophy bases predrilled with a hole as described in this ruling letter.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF COMPONENTS FOR ELECTRICAL TRANSFORMER CORES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of components for electrical transformer cores.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of components for electrical transformer cores, and revoking any treatment Customs has previously accorded to substantially identical trans-

actions. Notice of the proposed revocation was published on April 17, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 5, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760. After June 8, 2002, the number is (202) 572-8779.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on April 17, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 16, proposing to revoke HQ 958077, dated January 31, 1996, which classified steel pieces, cut to specific sizes and shapes in Canada from alloyed silicon electrical steel in coils, as flat-rolled products of grain oriented, silicon electrical steel, in subheading 7226.10.50 (now 7226.11.90), HTSUS, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treat-

ment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *HQ* 958077 to reflect the classification of the cut-to-shape alloyed steel pieces, in sub-heading 8504.90.90, HTSUS, as other parts of electrical transformers, pursuant to the analysis in *HQ* 965472, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *CUSTOMS BULLETIN*.

Dated: May 20, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, May 20, 2002.

CLA-2 RR:GC 965472 JAS
Category: Classification
Tariff No. 8504.90.95

MR. CHRIS BROWN
COGENT POWER, INC.
279 Sumach Drive, RR#2
Burlington, ON, Canada L7R 3X5

Re: Alloy Steel Shapes for Use in Electrical Transformer Cores; *HQ* 958077 Revoked.

DEAR MR. BROWN:

In our ruling to CorMag Inc., the predecessor to Cogent Power Inc., *HQ* 958077, dated January 31, 1996, the processing in Canada of alloy steel in coils from the United Kingdom into cut-to-size steel shapes was held to be insufficient to confer originating-goods status under the North American Free Trade Agreement (NAFTA), on the steel shapes entering the customs territory.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement

Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 958077 was published on April 17, 2002, in the CUSTOMS BULLETIN, Volume 36 Number 16. No comments were received in response to that notice.

Facts:

As described in HQ 958077, the merchandise entering the customs territory of the United States from Canada is individual pieces of alloyed steel, each measuring 4 inches wide, from 10 to 20 inches long, and from .009 to .014 inch in thickness. These steel pieces, which will be incorporated into cores for electrical transformers, are made in Canada from alloyed, grain-oriented, electrical steel from the United Kingdom imported into Canada in coils. In Canada, the steel is uncoiled and the individual pieces cut to specific sizes and shapes as required by the transformer manufacturer. These pieces, referred to in the trade as legs and yokes, are ready for assembly, without further fabrication. After importation, several thousand of these steel pieces are stacked and clamped into an E-shape, and the legs of the E are then encased in copper windings to complete the transformer. Electricity is passed through the copper to magnetize the core.

We rejected your proposed classification of the merchandise as unfinished transformer cores classifiable in subheading 8504.90.95, Harmonized Tariff Schedule of the United States (HTSUS), as other parts of electrical transformers. It was Customs belief that though cut-to-size, the shapes nevertheless conformed to the definition for *Flat-rolled products*, in Chapter 72, Note 1(k), HTSUS. Classification of the merchandise as a flat-rolled product is not sufficient to confer originating-goods status on the merchandise under the NAFTA. However, we have now had occasion to reconsider both the classification of this merchandise, and its status as originating goods.

Issue:

Whether the processing in Canada of alloyed, grain-oriented, electrical steel in coils from a non-NAFTA country, is sufficient to confer originating-goods status for purposes of the NAFTA.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Additional U.S. Rule of Interpretation 1(c), HTSUS, states, in part, that in the absence of special language or context which otherwise requires a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" shall not prevail over a specific provision for such part. It was on this basis that HQ 958077 concluded that the merchandise at issue was specifically provided for as a flat-rolled product.

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b). Upon further consideration of the law in these circumstances, we believe that Section XVI, Note 2, HTSUS, provides "special language or context" that requires a determination of whether the cut-to-size steel shapes are goods included in a heading of chapter 84 or 85, or are parts suitable for use solely or principally with a machine or apparatus of either of those chapters. See *Mitsubishi International Corporation v. U.S.*, 5 F. Supp. 2d 991 (CIT 1998), HQ 954768, dated January 4, 1994, and cases cited.

The facts indicate that the individual pieces at issue are cut to specific sizes and shapes as required by the transformer manufacturer. These pieces are ready for assembly, without further fabrication, into cores for electrical transformers. For tariff purposes, a "part" is an integral, constituent component of another article, necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. Upon the stated facts, it is apparent from their intended use in cores for electrical transformers, that the cut-to-size steel pieces or shapes qualify as parts for tariff purposes. They are not goods included in any heading of chapters 84 or 85. Under Section XVI, Note 2(b), HTSUS, therefore, the merchandise appears to be principally, if

not solely, used with electrical transformers of heading 8504. Classification as parts, in subheading 8504.90.95, HTSUS, is therefore appropriate.

To be eligible for tariff preferences under the NAFTA, goods must be "originating goods" within the rules of origin in General Note 12(b), HTSUS. General Notes 12(b)(I) and (ii)(A), HTSUS, state:

[f]or the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "*goods originating in the territory of a NAFTA party*" only if—

(I) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(II) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein * * *

One such authorized change in tariff classification is a change to subheading 8504.90 from any other heading. General Note 12(t)/85.8, HTSUS. As stated in HQ 958077, the alloyed, grain-oriented, electrical steel in coils entering Canada constitutes *Flat-rolled products*, as defined in Chapter 72, Note 1(k), HTSUS. The merchandise is provided for either in heading 7225 or in heading 7226, HTSUS, depending on width. As the processing in Canada results in individual steel pieces that qualify as parts under subheading 8504.90, HTSUS, the requisite originating-goods status is conferred on the merchandise entering the customs territory, as required by General Note 12(t)/85.8, HTSUS.

Holding:

Under the authority of GRI 1, and Section XVI, Note 2(b), HTSUS, the individual pieces of alloyed, grain-oriented electrical steel, imported into the customs territory in the manner herein described, are provided for in heading 8504. They are classifiable in subheading 8504.90.95, HTSUS. The merchandise qualifies as "*goods originating in the territory of a NAFTA party*," and is therefore eligible for preferential tariff treatment under the NAFTA.

Effect on Other Rulings:

HQ 958077, dated January 31, 1996, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF REMOVABLE ROAD TAPE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of removable road tape.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling letter pertaining to the tariff classification of removable road tape, under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before July 5, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 927-1638. After June 8, 2002, please call (202) 572-8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for us-

ing reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of removable road tape. Although in this notice Customs is specifically referring one ruling (NY F87908) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY F87908, dated October 18, 2000 (Attachment A), removable road tape consisting of non-vulcanized nitrile-butadiene rubber, hot melt adhesive, glass beads and a polyurethane topcoat, was found to be classifiable in subheading 7018.90.50, HTSUS, which provides for other articles of glass beads. At that time, Customs believed that none of the components imparted the essential character of the product and thus could not classify the good according to General Rule of Interpretation (GRI) 3(b). Customs applied GRI 3(c), classifying the product according to the heading that occurred last in numerical order among those meriting equal consideration.

It is now Customs position that the product does have an essential character, and is thus classifiable according to GRI 3(b), negating the need to apply GRI 3(c). Explanatory Note VIII to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." The

unvulcanized rubber component imparts the essential character of the removable road tape because it makes up the bulk of the product in weight, mass and value. It is the base material of the product. Without it, there would be no tape. Moreover, it is the rubber material that imparts the qualities, such as durability, necessary for the tape to be used as intended. Therefore, it is classifiable according to GRI 3(b) in subheading 4005.91.00, HTSUS, which provides for "Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip: other: plates, sheets, and strip."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F87908, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 965678 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: May 20, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, October 18, 2000.
CLA-2-70:RR:NC:2:226 F87908
Category: Classification
Tariff No. 7018.90.5000

MR. JONAS SVENSSON
TRELLEBORG INDUSTRI AB
SE-231 81
Trelleborg, Sweden

Re: The tariff classification of a glass beaded article from Sweden.

DEAR MR. SVENSSON:

In your letter dated May 26, 2000, you requested a tariff classification ruling. A representative sample of the item was submitted and was sent to our Customs laboratory for analysis.

The subject article, which is identified as "Trelleborg Removable Road Tape", is composed of four components: non-vulcanized nitrile-butadiene rubber, hot melt adhesive, glass beads and a polyurethane topcoat. You indicated that the urethane is applied to the rubber sheet and the glass beads are metered onto the urethane surface. The bottom surface is treated with a hot melt adhesive that is protected with a paper peel-off backing.

An analysis of the sample by our Customs laboratory was consistent with your description.

You indicated in your letter that the road tape will be used to form temporary lane markings, e.g., at repair or construction sites. It will be available in yellow, orange, white and black. The standard dimensions are 10, 12 and 15 cm in width and 100 meters in length, and in special dimensions of 20 to 50 cm in width and 25 to 100 meters in length.

Neither the non-vulcanized nitrile-butadiene rubber, the hot melt adhesive, the glass beads nor the polyurethane topcoat imparts the essential character of this product, therefore, based on GRI 3(c), we classify the removable road tape according to the heading which occurs last in the Harmonized Tariff Schedule of the United States (HTS).

The applicable subheading for the removable road tape will be 7018.90.5000, HTS, which provides for glass beads * * * and articles thereof * * * other, other. The duty rate will be 6.6% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 212-637-7074.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2: RR:CR:GC 965678 DBS

Category: Classification

Tariff No. 4005.91.00

MR. JONAS SVENSSON
TRELLEBORG INDUSTRI AB
Nygatan-102
SE 231 45
Trelleborg, Sweden

Re: Revocation of NY F87908; removable road tape; mixtures; GRI 3(b).

DEAR MR. SVENSSON:

In NY F87908, issued to you on October 18, 2000, the Director, National Commodity Specialist Division, New York, classified "Trelleborg Removable Road Tape" in subheading 7018.90.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of glass beads. We have reconsidered the classification of this article and now believe it is incorrect.

Facts:

These are the facts as stated in NY F87908:

The subject article, which is identified as "Trelleborg Removable Road Tape", is composed of four components: non-vulcanized nitrile-butadiene rubber, hot melt adhesive, glass beads and a polyurethane topcoat. You indicated that the urethane is applied to the rubber sheet and the glass beads are metered onto the urethane surface. The bottom surface is treated with a hot melt adhesive that is protected with a paper peel-off backing.

An analysis of the sample by our Customs laboratory was consistent with your description.

You indicated in your letter that the road tape will be used to form temporary lane markings, e.g., at repair or construction sites. It will be available in yellow, orange, white and black. The standard dimensions are 10, 12 and 15 cm in width and 100 meters in length, and in special dimensions of 20 to 50 cm in width and 25 to 100 meters in length.

NY F87908 stated that none of the components of the road tape imparted the essential character of the product. Thus, it was classified according to General Rule of Interpretation 3(c), which requires classification in the heading that occurs last in numerical order among those which equally merit consideration, in heading 7018, HTSUS, which provides for glass beads.

Counsel for Trelleborg Rubore, Inc. submitted additional information on June 26, 2001, about the "Trelleborg Removable Road Tape" in support of an Application for Further Review of Protest #1704-01-100177 it filed pursuant to 19 C.F.R. 174.23. We have taken this information into consideration while reviewing NY F87908. The pertinent parts of that submission are included below.

The product is imported in rectangular-shaped strips. The white and yellow tapes consist of unvulcanized rubber tape coated with pigmented polyurethane coating, reflective spherical glass ("ballotini"), glass grains for skid resistance, a rubber-based pressure-sensitive adhesive and a small amount of silicone release agent, which is applied to the adhesive to permit the tape to be unrolled without sticking to itself. The yellow tape and white tape are used to provide temporary lines on road surfaces during road construction. Due to the ballotini, the white and yellow forms are reflective. The black tape is not coated with ballotini or pigmented polyurethane coating. It is used to cover existing painted lines on roads. The black tape is coated with glass or aluminum oxide grains for skid resistance. The orange tape is not imported into the United States.

In addition, counsel submitted charts demonstrating that the unvulcanized rubber comprises 60% or more of the weight and 49% or more of the value of this product, along with arguments supporting classification in heading 4005, HTSUS, which is the provision for unvulcanized rubber.

Issue:

Whether removable road tape is classifiable according to GRI 3(b), and, if so, what is the essential character?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

4005	Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip: Other:
4005.91.00	Plates, sheets, and strip
	* * * * *
7018	Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter:
7018.90	Other:
7018.90.50	Other

GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. The removable road tape is a combination of four or more materials, consisting partly of unvulcanized rubber strip, classifiable in heading 4005, HTSUS, partly of glass beads clas-

sifiable in heading 7018, HTSUS, and partly of various other components, each classifiable in different headings. As such, the items are not specifically provided for in any one heading. For tariff purposes, they constitute goods consisting of two or more substances or materials, which are not classified according to GRI 1.

GRI 2(b) requires that the "classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3(a) states, in pertinent part, "when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods * * * those headings are to be regarded as equally specific * * *." As each heading refers to part only of the road tape, they are considered equally specific. The product cannot be classified according to GRI 3(a).

GRI 3(b) provides for "composite goods consisting of different materials or made up of different components * * * which cannot be classified according to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." Explanatory Note VIII to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."

The unvulcanized rubber comprises at least 60% of the weight of the product and contributes the majority of value to the product. It makes up the bulk of the product (i.e. mass) and it is the base material, or substrate, of the product. Without it, there would be no tape. The rubber component is necessary regardless of time of day, or whether making new lines or covering existing lines. Moreover, it is the rubber material that imparts the qualities, such as durability, necessary for the tape to be used as intended. According to the nature of the rubber in the tape, its bulk, quantity, value, and to the role of the rubber in relation to the use of the tape, the rubber imparts the essential character of the tape for tariff purposes.

The ballotini, the glass grains, and polyurethane coating contribute to the functions of the tapes, but they are merely features. NY F87908 found each component merited equal consideration. However, the ballotini, used for reflective purposes at night, is not necessary for daytime use, and the black tape is made without ballotini. Therefore, the ballotini does not merit equal consideration. Further, a composite good cannot be classified under a heading that does not describe any part of the good. The black tape cannot be classified in heading 7018, HTSUS. Neither can the yellow and white tape because, again, the ballotini does not merit equal consideration. As it does not merit equal consideration, and as the rubber does impart the essential character of the product, GRI 3(c) was erroneously applied. This good is classifiable according to GRI 3(b) in subheading 4005.91.00, HTSUS, which provides for "Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip: other: plates, sheets, and strip."

Holding:

"Trelleborg Removable Road Tape" is classifiable subheading 4005.91.00, HTSUS, which provides for "Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip: other: plates, sheets, and strip."

Effect on Other Rulings:

NY F87908, dated October 18, 2000, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION AND REVOCATION OF CUSTOMS RULING LETTERS RELATING TO THE APPLICABILITY OF CUSTOMS POSITION ON WHO IS CONSIDERED A PASSENGER UNDER THE COASTWISE LAWS (46 U.S.C. APP. 289, 19 CFR 4.50(b))

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of Revocation and Modification of Rulings.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI of the North American Free Trade Implementation Act (Pub. L. 103-182, 107 Stat. 2186), this notice advises interested parties that Customs is modifying its position regarding which persons transported on vessels are considered passengers under the coastwise laws and is revoking all prior rulings inconsistent with this position. Customs has decided to take a more restrictive interpretation regarding which persons transported on a vessel are considered passengers under the coastwise laws.

EFFECTIVE DATE: The actions are effective August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Robert S. Dinerstein, Entry Procedures and Carriers Branch, Office of Regulations and Rulings (202) 927-1454.

SUPPLEMENTAL INFORMATION:

BACKGROUND

On February 20, 2002, Customs published in the CUSTOMS BULLETIN, Vol. 36, No. 5, notice of a proposal to modify its position regarding which persons are considered passengers under the coastwise laws and to revoke all prior rulings inconsistent with the proposed modification. Customs proposed to apply a more restrictive interpretation regarding which persons transported on a vessel are considered passengers under the coastwise laws. Under this revised interpretation of the passenger provisions, persons transported on a vessel will be considered passengers unless they are directly and substantially connected with the operation, navigation, ownership, or business of that vessel. Customs further proposed to reinterpret the passenger provisions to provide that persons transported free of charge as inducement for future patronage or good will are considered passengers. In addition, under the proposal, persons transported on a vessel for reasons connected to business interests not directly related to the business of the vessel itself would be considered passengers.

In the notice, we pointed out that there were numerous headquarters rulings which reach contradictory conclusions regarding whether particular persons transported on a vessel are passengers under 46 U.S.C. App. 289 and 19 CFR §4.50(b). We noted that in Headquarters Ruling Letter 115034 dated May 22, 2000, Customs ruled that individuals referred to as friends, colleagues, business associates, representatives,

commercial sponsors, and contributors were not connected with the operation, navigation, ownership or business of the vessel and thus such individuals were considered passengers within the meaning of 46 U.S.C. App. 289 and 19 CFR 4.50(b). In contrast, Customs had previously held in Headquarters Ruling Letter (HRL) 113878 dated April 1, 1997, that certain persons who were transported aboard a Cayman Islands documented pleasure vessel by political and charitable organizations for funding raising were not passengers.

We indicated that it was difficult to reconcile these contradictory rulings and that greater clarity and consistency were needed in determining which persons transported on vessels are passengers. Because of the restrictive nature of the coastwise laws, we believe that it would be more in keeping with the spirit of the coastwise laws if a stricter interpretation regarding which persons transported on a vessel are considered passengers were to be adopted. Under this revised position, the term passenger will include persons who are transported on a vessel for whom a vessel owner or operator receives or expects to receive any compensation, direct or indirect, even if it is in the form of patronage or good will. Specifically we announced that we would modify HRL 113878 so that persons who are transported aboard a foreign flag pleasure vessel by political and charitable organizations would be considered passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR §4.50(b)). This means that we will revoke or modify any ruling holding that those individuals transported as an inducement for future patronage or good will are not passengers. A copy of the revised HRL 115072 was set forth as an attachment to the notice. We also identified 12 additional rulings which would be modified or revoked with respect to their findings that certain persons transported on a vessel would not be considered passengers under 19 CFR § 4.50(b).

The essence of the modification is that persons transported on a vessel will be considered passengers unless it can be demonstrated that they are directly and substantially connected with the operation, navigation, ownership, or business of the vessel itself, and not merely related to some other interest of the vessel owner. This means that persons who are transported on a vessel in connection with some aspect of a vessel owner's business interests unrelated to the business of the vessel itself would be passengers. However, we reiterated that the proposed change would not affect the current position of Customs that bona fide guests of an owner or bareboat charterer of a pleasure vessel or yacht are not passengers for purposes of the coastwise laws.

Comment:

One comment was received in response to the proposal. The comment strongly disagreed with the proposed revised interpretation regarding which persons transported on a vessel would be considered passengers. The commenter contends that because Congress has not increased the penalties for violations of 46 U.S.C. § 289 for the unlawful transportation of passengers from one United States point to another point on a

non-coastwise-documented vessel, this indicates that it does not want Customs to take a more restrictive approach regarding who is a passenger. Furthermore the commenter points out that there is proposed legislation called the United States Cruise Vessel Act, H.R. 2901, which would loosen, not tighten, the cabotage restrictions. According to the commenter, there is a Congressional trend toward allowing foreign vessels greater opportunities to operate in United States waters where there is little likelihood of a detrimental effect on U.S. vessel owners. The commenter also claims that limiting the carriage of persons on vessels would make it difficult, if not impossible for certain vessels to operate in U.S. waters and thus hurt certain marine related businesses including ship repair, ship supply, launch services, and other local port industries. The commenter favors abandoning the proposed modification with respect to passengers and adopting a rule that provides that whenever a person is transported in a vessel without the owner or operator receiving compensation for the transportation, that person should not be considered a passenger.

Response:

Customs recognizes that over the years, in determining whether certain persons transported on vessels are passengers under 46 U.S.C. App. 289, a number of contradictory headquarters ruling letters have been issued. For example, in Headquarters Ruling Letter 109543 dated September 9, 1988, Customs held that business guests such as insurance brokers, business financial customers and other contacts of the corporate charterers are passengers for the purposes of 46 U.S.C. App. 289. While only a few months later, in Headquarters Ruling Letter 109781, dated November 7, 1988, Customs ruled that insurance brokers or others involved in the insurance and financial services industry which were transported aboard a vessel for the purpose of promoting good will for the corporation and in the hope of obtaining future business were not passengers. These and other contradictory rulings have resulted in much confusion. This has made it difficult for Customs officials and the public in applying the restrictions of 46 U.S.C. App. 289 regarding the prohibition on transporting passengers on vessels between coastwise points on non-coastwise-qualified vessels. What Customs is attempting to do by issuing this modification notice is to develop a more consistent standard on this issue by following a stricter application regarding which individuals transported on a vessel would be considered passengers.

It should be recognized in this modification notice that Customs is not changing the definition of the term passenger found in §4.50(b) of the Customs Regulations (19 CFR 4.50(b)), as being any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business. Instead, Customs will be adopting a stricter application of this definition, so that it will be presumed that persons transported on a vessel will be considered passengers unless it can be demonstrated that they are directly and substantially connected

with the operation, navigation, ownership, or business of the vessel itself, and not merely related to some other aspect of the vessel owner's business. Customs believes that this application of the regulation is more in keeping with the spirit of 46 U.S.C. App. §289. Customs notes that the purpose of Coastwise laws such as 46 U.S.C. App. §289 is to protect the U.S. shipbuilding and maritime industries, by prohibiting the transportation of passengers between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under laws of and owned by citizens of the United States. Customs finds that it is clear that 46 U.S.C. App. §289 is a restrictive statute which is designed to limit the transportation of persons in U.S. waters to U.S.-built, owned and documented vessels. We believe that there is no indication that Congress has at any time signaled that it intends for Customs to take a more permissive approach regarding which vessels may transport persons in U.S. waters. Moreover, Customs does not concur in ascribing great importance to the two alleged indicators presented by the commenter: 1) Congress has not raised the penalty for the illegal transportation of passengers in U.S. waters in many years, and; 2) that there is proposed legislation pending which would ease the cabotage restrictions as being very persuasive evidence that Congress intends for Customs to be more lenient in enforcing who will be considered a passenger on a vessel.

We believe that the commenter's recommendation that Customs adopt a definition of the term passenger to mean that whenever a vessel owner does not receive compensation for the transportation of a person on a vessel that person would not be considered a passenger, is too narrow. It almost certainly would require a change in the Customs regulations since this definition of the word "passenger" is very different than the one found at 19 CFR 4.50(b). We also note that the word "compensation" is vague because it could include more than a monetary exchange between parties. For example, a strong argument could be made that an owner will receive indirect compensation in the form of good will and future business for transporting so-called business guests on a vessel even if they do not directly pay money for the passage at the time of the voyage. Therefore, Customs believes it best to find that a person transported on a vessel would be considered a passenger unless it can be demonstrated such a person is directly connected to the navigation, ownership, or business of the vessel itself. While we recognize that there still may be close calls in determining whether certain individuals being transported on a vessel are passengers, the burden will be on the vessel owner to establish that persons transported on the vessel are not passengers.

Although the stricter application of the passenger provisions of the coastwise laws may adversely impact some businesses who would benefit if they serviced foreign vessels and if those foreign vessels could carry passengers, we believe this a policy question that Congress long ago spoke to when it enacted 46 U.S.C. App. 289. Under this statute, Cus-

toms has the responsibility to ensure that only coastwise-qualified vessels carry passengers between coastwise points. We point out that there is no change with respect to the carriage of *bona fide* guests aboard pleasure or recreational vessels. Therefore, this change application process for the regulations regarding passengers will not affect the bareboat charterers of pleasure vessels and their guests.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended and section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub.L. 103-182, 107 Stat. 2057) this notice advises interested parties that Customs is modifying HRL 113878 pertaining to which persons transported on vessels will be considered passengers under the coastwise laws and is revoking and/or modifying all prior rulings inconsistent with this notice. Accordingly, persons transported on vessels will be passengers unless they are directly and substantially connected with the operation, navigation, ownership, or business of these vessels. In addition, persons transported on a vessel for reasons connected to business interests not directly related to the business of the vessel itself will be considered passengers. HRL 115072 modifying HRL 113878 is set forth as an attachment to this document. We have also identified 13 additional rulings which are modified or revoked with respect to their findings that certain persons transported on a vessel would not be considered passengers under 19 CFR 4.50(b). Accordingly, the following rulings are so modified or revoked;

- 1) Headquarters Ruling Letter 114343 dated June 18, 1998.
- 2) Headquarters Ruling Letter 113878 dated April 1, 1997.
- 3) Headquarters Ruling Letter 113017 dated February 9, 1994.
- 4) Headquarters Ruling Letter 109781 dated November 7, 1988.
- 5) Headquarters Ruling Letter 108501 dated August 29, 1986.
- 6) Headquarters Ruling Letter 108278 dated April 2, 1986.
- 7) Headquarters Ruling Letter 108239 dated March 14, 1986.
- 8) Headquarters Ruling Letter 108147 dated March 3, 1986.
- 9) Headquarters Ruling Letter 107028 dated October 18, 1984.
- 10) Headquarters Ruling Letter 105612 dated May 19, 1982.
- 11) Headquarters Ruling Letter 104276 dated October 22, 1979.
- 12) Headquarters Ruling Letter 102756 dated April 7, 1977.
- 13) Treasury Decision 69-120(4) dated April 30, 1969.

Customs also recognizes that this list may not be complete and that there may exist other ruling letters that have not been identified which are inconsistent with this notice. Accordingly, this notice is intended to cover any ruling that pertains to whether persons transported on vessels are considered passengers under 19 CFR 4.50(b).

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: May 17, 2002.

LARRY L. BURTON,
*Acting Director,
International Trade Compliance Division.*

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 17, 2002.
VES-3-RR:IT:EC 115072RSD
Category: Carriers

MR. ROBB R. MAASS
321 Royal Poinciana Plaza, South
Post Office Box 431
Palm Beach, FL 33480-0431

Re: Definition of passenger; Yachts; Charitable and political organizations; Reimbursement for expenses; 46 U.S.C. App. 289; 19 CFR 4.50(b).

DEAR MR. MAASS:

In our ruling number 113878 of April 1, 1997, we found that certain persons transported aboard your client's Cayman Islands documented pleasure vessel were not considered to be passengers as that word is defined in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)). We have reconsidered this position and now believe it to be incorrect.

Facts:

At the time we issued our 1997 ruling (HQ 113878) we recited the following factual background. A corporation organized under the laws of the British Virgin Islands owns a 163-foot Turkish-built yacht which is registered in the Cayman Islands. It is stated that the vessel will be arriving in the United States during the month of April. The corporate owner desires to offer the vessel for the use of political and charitable organizations in this country as a venue for fund raising events. The owner would not receive compensation from the organizations utilizing the vessel, but may be compensated for the cost of food and entertainment. It is anticipated that the company may seek to obtain a charitable tax deduction for the value of services provided. During some of the events it is likely that the vessel would remain dockside, but during others the vessel would be underway and would likely remain within United States waters.

Issue:

Whether persons transported aboard a foreign-flag pleasure vessel by political and charitable organizations under circumstances as described above would be considered to be passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)).

Law and Analysis:

The Act of June 19, 1886, as amended (24 Stat. 81; 46 U.S.C. App. § 289, sometimes called the coastwise passenger law), provides that:

No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.

For your general information, we have consistently interpreted this prohibition to apply to all vessels except United States-built, owned, and properly documented vessels (see 46 U.S.C. §§ 12106, 12110, 46 U.S.C. App. § 883, and 19 C.F.R. § 4.80).

The definition of "passenger" for purposes of enforcement of the coastwise laws is contained in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)), and includes any person not connected with the ownership, operation, navigation or business of the vessel upon which transportation is provided.

The definition of a prohibited "passenger" in this area has, been the subject of varying interpretations as demonstrated in administrative rulings. One early ruling issued by the Department of Commerce, Bureau of Navigation (General Letter No. 117, dated May 20, 1916), interpreted the term for purposes of the Steamboat-Inspection Laws, finding that a stockholder of the corporation owning a vessel is a passenger when transported aboard that vessel. Similarly, in directly confronting the question in relation to 19 CFR 4.50(b), Customs stated in a letter of August 29, 1960 (MA 217.1), that:

*** newspapermen or cruise agents who merely accompany the vessel for publicity purposes and cruise passage sales promotion are not persons connected with the operation, navigation, ownership, or business of the vessel within the meaning of section 4.50(b) of the Customs Regulations. The activity of the persons involved is only remotely or indirectly connected with the operation or business of the vessel rather than being direct and immediate as is contemplated by the regulations.

In HQ 113304, dated January 11, 1995 we determined that the existing or potential clients of the corporate owner were passengers within the meaning of 46 U.S.C. App. 289 and 19 CFR 4.50(b). We noted that the clients were not connected with the operation, navigation, ownership or business of the vessel. Accordingly, we ruled that those individuals could not be transported from one coastwise point to another coastwise point as was proposed.

Similarly, in this instance, it is now our view that the individuals who are transported on the vessel during fund raising events of political and charitable organizations are not directly and substantially connected with the operation, navigation, ownership or business of the vessel. Thus, such individuals would be considered passengers even though no direct monetary consideration is given to the vessel owner. Accordingly, for these individuals, cruises entirely within U.S. territorial waters, cruises between U.S. ports, and cruises between U.S. ports via nearby foreign ports would be prohibited. However, the activities described which do not involved transporting individuals between places in the United States, such as receptions while the vessel is moored or anchored either at a U.S. port or within the U.S. territorial waters would not be in violation of the coastwise laws.

Holding:

Headquarters Ruling Letter 113878 is hereby revoked. In accordance with 19 U.S.C. 1625 (c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Persons who are transported aboard a foreign-flag pleasure vessel by political and charitable organizations would be considered passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50). Consequently, the carriage of such persons aboard the vessel in question for the purpose of fund raising for the charitable and political organizations would be in violation of 46 U.S.C. App. 289 even though there is no monetary consideration exchanged for the voyage. The issue of the possibility of charitable tax deductions surrounding the proposed activities is a matter within the jurisdiction of federal, state, and local taxing agencies.

LARRY L. BURTON,

Acting Director,

International Trade Compliance Division.

PROPOSED MODIFICATION AND REVOCATION OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
THE TARIFF CONCEPT OF FUNCTIONAL UNITS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff concept of functional units.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify two (2) rulings and to revoke two (2) other rulings, relating to the tariff concept, under the Harmonized Tariff Schedule of the United States (HTSUS), of incomplete or unfinished functional units, and to revoke any treatment Customs has previously accorded to substantially identical transactions. This notice applies as well to interpretative rulings identified in this notice by control number only.

Under Section XVI, Note 4, HTSUS, where machines, including a combination of machines, consisting of separate components intended to contribute together to a clearly defined function covered by one of the headings in chapters 84, 85, or 90, the whole is to be classified in the heading appropriate to that function. This notice proposes that such importations which lack one or more of the machines or components necessary to a complete functional unit may nevertheless be classified in a 4-digit heading of the HTSUS, provided that, as imported, the components are found to impart the essential character to the whole under General Rule of Interpretation (GRI) 2(a), HTSUS. This notice also proposes that goods qualifying as functional units be eligible for classification in heading 8479, HTSUS, if the requisite terms and conditions for such classification are met. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before July 5, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760. As of June 8, 2002, please call (202) 572-8779.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify two (2) rulings and to revoke two (2) other rulings, as well as other interpretative rulings identified by control number only. These rulings relate to the tariff concept under the HTSUS of incomplete or unfinished functional units, and whether functional units may be classified in heading 8479, HTSUS. Although in this notice Customs is specifically referring to four (4) rulings, *HQ 087077*, *HQ 962105*, *HQ 963029* and *HQ 965123*, the notice also covers the following rulings involving the tariff concepts at issue: *HQ 958629*, *HQ 958641*, *HQ 961210*, *HQ 961441*, *HQ 962945*, *HQ 958577*, *HQ 960816*, *HQ 962659*, *HQ 960632*, and *NY G87193*. In addition, *HQ 950218*, *HQ 958914*, *HQ 957150*, and *NY E86072* and *NY H88170* are clarified with respect to statements therein concerning incomplete or unfinished functional units. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. Other than the ones listed, no further rulings have been located. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a

ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *HQ* 087077, dated March 27, 1991, a chromatograph server and a chromatograph, among other articles, both components of the Chromatography Data Management System, but imported without the computer necessary to receive information from the chromatograph through the server, were held to be separately classifiable, in headings 8471, and 9027, HTSUS, respectively. *HQ* 087077 is set forth as "Attachment A" to this document. In *HQ* 963029, dated July 7, 2000, industrial robots, consisting of an articulated arm or manipulator on a base, and a process controller connected by cables or wiring, but without a welding gun, grippers or other end-of-arm tooling, were classified in headings 8479 and 8537, HTSUS, respectively. *HQ* 963029 is set forth as "Attachment B" to this document. In *HQ* 962105, dated April 22, 1999, substantially similar merchandise was classified in like fashion. *HQ* 962105 is set forth as "Attachment C" to this document. In *HQ* 965123, dated February 27, 2002, a condensing unit for use in refrigeration applications, imported without an evaporator required for the apparatus to function as refrigeration equipment, was classified as a part, in heading 8418, HTSUS. *HQ* 965123 is set forth as "Attachment E" to this document. Each of these rulings precluded classification of the merchandise as a functional unit, under Section XVI, Note 4, HTSUS, due to the absence of one or more components necessary to a complete good. In addition, *HQ* 962105 precluded from a functional unit analysis combinations of machines classifiable in heading 8479, HTSUS. It is now Customs position that a machine or apparatus consisting of separate components that contribute together to a clearly defined function covered by a heading in chapter 84, chapter 85 or chapter 90, whether they remain separate or are interconnected by piping, power transmitting devices, electric cables or other devices, may be classified in their appropriate heading, despite the absence of one or more components necessary to the complete good, provided that, as imported, the components are found to impart the essential character to the complete good under GRI 2(a), HTSUS. Further, it is now Customs position that goods qualifying as a functional unit may be eligible for classification in heading 8479, HTSUS, provided the terms and conditions for such classification are met.

Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to modify and revoke the cited rulings, as well as the rulings identified by control number only, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in *HQ*

965634, HQ 965635, HQ 965637 and HQ 965638, which are set forth as "Attachments F, G, H and I" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

If this proposal is adopted, recipients of rulings either modified or revoked by this notice, other than the four (4) rulings specifically appearing as Attachments appended hereto, are invited to request new rulings on their specific facts, by writing to the Director, National Commodity Specialist Division, U.S. Customs Service, One Penn Plaza, 10th Floor, New York, NY 10119.

Dated: May 15, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, March 27, 1991.
CLA-2 CO:R:C:M 087077 MBR
Category: Classification
Tariff No. 8471.99.90 and 9027.20.40

DISTRICT DIRECTOR
U.S. CUSTOMS
10 Causeway Street, Room 603
Boston, MA 02222-1056

Re: Internal Advice 25/90; Chromatography Server; 9027; Instruments and Apparatus for Physical or Chemical Analysis; 8471; Automatic Data Processing Machine; Control and Adapter Units; Signal Converter; Functional Unit.

DEAR SIR:

This is in reply to your request for Internal Advice 25/90, dated March 13, 1990, regarding classification of the Chromatography Server, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Facts:

The Chromatography Server ("Server") is imported by VG Instruments, Inc., as a component of the Chromatography Data Management System. The Server acts as an interface between the actual chromatograph and the automatic data processing unit ("ADP"). The Server accepts analog data from the chromatograph, converts that information to digital data, stores the data in its cache memory until the ADP is ready to receive it, and then transmits the digital data to the ADP.

There are four proposed import configurations: 1) Server; 2) Server, Chromatograph, and Computer; 3) Server and Chromatograph; 4) Server and Computer.

Issue:

What is the classification of a Chromatography Server, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUSA govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part:

classification shall be determined according to the terms of the headings and any relative section or chapter notes

The Server is *prima facie* classifiable in the following headings:

9027	Instruments and apparatus for physical or chemical analysis ***; parts and accessories thereof:
9027.90.40	Microtomes; parts and accessories: Parts and accessories: Of electrical instruments and apparatus: Of articles of subheading 9027.20.40 (Chromatographs)
"	"
8471	Automatic data processing machines and units thereof:
8471.99.15	Other: Other: Control or adapter units
"	"
8471	Automatic data processing machines and units thereof:
8471.99.90	Other: Other: Other: Other

There are four proposed import configurations of the Server: 1) Server; 2) Server, Chromatograph, and Computer; 3) Server and Chromatograph; 4) Server and Computer.

It has been argued that the Server, imported separately, is properly classifiable under subheading 8471.99.15, HTSUSA, which provides for control or adapter units for ADP machines.

Legal Note 5(B), chapter 84, delineates "units" of automatic data processing (ADP) systems. Legal Note 5(B) states:

Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:

- (a) It is connectable to the central processing unit ***
- (b) It is specifically designed as part of such a system ***

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), for heading 8471, page 1299, state:

(D) SEPARATELY PRESENTED UNITS

This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.

Apart from central processing units and input and output units, examples of such units include:

(4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc. (emphasis added).

However, the Chromatograph is *not* an "other digital data processing machine" or a "group of input or output units." Therefore, since the Server is designed to interconnect the Chromatograph and the CPU, it cannot be considered a control or adapter unit for an ADP system. See HQ 087902, dated January 14, 1991, regarding control and adapter units of ADP systems.

The Server functions by accepting analog data from the chromatographs. Then, utilizing its A/D converter board, the Server converts the analog signals to the digital signals which can be processed by the ADP machine.

The ENs which provide for "Separately Presented Units" of ADP machines, page 1300, include:

(5) *Signal converting units.* At input, these enable an external signal to be understood by the machine, while at output, they convert the output signals that result from the processing carried out by the machine into signals which can be used externally.

Therefore, it is Customs position that the Server is, in fact, a "signal converting unit" and is thus properly classifiable under subheading 8471.99.90, HTSUSA, which provides for: "Automatic data processing machines and units thereof: Other: Other: Other."

HQ 086851, dated April 9, 1990, held that a Chromatograph and a Computer, imported together, were a functional unit intended to contribute to the clearly defined function of Chromatography.

Section XVI, Note 4, requires the classification of "functional units" to be within the heading appropriate to the function of the unit. Chapter 90, Note 3, HTSUSA provides that Section XVI, Note 4 also applies to Chapter 90. Thus, Section XVI, Note 4 is applicable to heading 9027. Section XVI, Note 4, states:

Where a machine * * * consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), page 1133, states that a "functional unit" covers only those "machines and combination of machines essential to the performance of the function specific to the functional unit as a whole * * *". The function specific to the goods in question is clearly Chromatography.

Therefore, the Server, Chromatograph and Computer configuration is properly classifiable under subheading 9027.20.40, HTSUSA, which provides for: "Instruments and apparatus for physical or chemical analysis * * *; parts and accessories thereof: Chromatographs and electrophoresis instruments: Electrical."

When the Server and the Chromatograph are imported together, they cannot be considered a functional unit without the ADP machine because there are no Legal Notes or ENs that provide for "unfinished functional units." Therefore, the Server would be classifiable under subheading 8471.99.90, HTSUSA, and the Chromatograph would be classifiable under 9027.20.40, HTSUSA.

No information has been submitted regarding the configuration of the ADP machine itself. However, when the Server is imported with the ADP machine, the Server would still be classifiable under subheading 8471.99.90, HTSUSA, and the ADP machine would be classifiable under the appropriate subheadings of 8471, HTSUSA.

Holding:

The VG Instruments, Inc., Chromatography Server is classifiable under subheading 8471.99.90, HTSUSA, which provides for: "Automatic data processing machines and units thereof: Other: Other: Other: Other." The rate of duty is 3.7% *ad valorem*.

The Chromatography Server imported with the Chromatograph and the ADP System is classifiable as a functional unit under subheading 9027.20.40, HTSUSA, which provides for: "Instruments and apparatus for physical or chemical analysis * * *; parts and accessories thereof: Chromatographs and electrophoresis instruments: Electrical." The rate of duty is 4.9% *ad valorem*.

When the Chromatography Server is imported with the Chromatograph, the Server is classifiable under 8471.99.90, HTSUSA, and the Chromatograph is separately classifiable under 9027.20.40, HTSUSA.

When the Chromatography Server is imported with the ADP machine, the Server is classifiable under subheading 8471.99.90, HTSUSA, and the ADP machine is classifiable under the appropriate subheadings of 8471, HTSUSA.

The Internal Advice applicant should be advised of this decision.

JOHN DURANT,

Director,

Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,
Washington, DC, July 7, 2000.

CLA-2 RR:CR:GC 963029 JAS

Category: Classification

Tariff No. 8479.50.00 and 8537.10.90

MR. PAUL S. ANDERSON
SONNENBERG & ANDERSON
200 South Wacker Drive, 38th Floor
Chicago, IL 60606

Re: Industrial Robots With Stand-Alone Controller but Without End-of-Arm Tooling.

DEAR MR. ANDERSON:

In a submission, dated July 6, 1999, on behalf of Motoman, Inc., you inquire as to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of industrial robots. You presented additional facts and legal arguments at a meeting in our office on April 28, 2000.

Facts:

The articles at issue are the SK and SV series electrically controlled industrial robots. Each consists of an articulated arm or manipulator on a base, a controller designated MRC, MRC II or XRC, and a programming or teaching pendant. Prior to importation, each robot is "configured," that is, a program of instructions to implement the robot's intended end use service application is burned onto a chip that becomes a permanent part of the controller, which is stand-alone and connected to the manipulator by electrical wiring or cables. The programming pendant is hand-held and attaches by cable to the controller. It functions as an input device that sends operating instructions in the form of signals which the controller interprets and uses to instruct the manipulator. Although each robot series are best suited, in terms of size, payload capacity and power, for certain applications, the vast majority are specified as being for arc welding or material handling. As imported, the robots lack welding guns, grippers or other end-of-arm tooling.

Citing rulings under both the HTSUS, and the HTSUS predecessor tariff code, the Tariff Schedules of the United States (TSUS), you contend that even without end-of-arm tooling a manipulator with its controller are within the common meaning of the term *industrial robot* as "an automatic machine which can be programmed to carry out repeatedly a cycle of movements." Moreover, each model in an industrial robot series is an incomplete or unfinished article under General Rule of Interpretation (GRI) 2(a), HTSUS, having the essential character of a complete or finished material handling machinery of heading 8428 or an arc welding machine of heading 8515. Alternatively, you contend that each robot and its controller constitute a composite good under GRI 3(b), HTSUS, and that it is the controller that imparts the essential character to the good.

The HTSUS provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery * * *:
8428.90.00	Other machinery
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 85] * * *:
8479.50.00	Industrial robots, not elsewhere specified or included
8515	Electric * * * soldering, welding or brazing machines and apparatus * * *:
8515.21.00	Machines and apparatus for resistance welding of metal: Fully or partly automatic
8537	* * * other bases * * * for electric control or the distribution of electricity:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other

Issue:

Whether a manipulator and controller, imported together, but without end-of-arm tooling constitutes an incomplete or unfinished good of heading 8428 or 8515; whether the manipulator itself is an incomplete or unfinished good of either heading.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 3(b), HTSUS, states in part that composite goods made up of different components shall be classified as if consisting of the component which gives them their essential character, insofar as this criterion is applicable.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Section XVI, Note 4, HTSUS, covers machines consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85. The whole, in such cases, is classified in the heading appropriate to that function.

Initially, NY A86781, dated September 17, 1996, is representative of rulings you cite in which Customs has classified manipulator arms and controllers as industrial robots. The cited ruling, however, merely states the robot models at issue, for use in polishing and deburring operations, will be imported with a programmable 200-volt automatic compensation controller. There is no indication in the description that this configuration requires a functional unit analysis.

We agree that a manipulator equipped with welding gun, gripper or other appropriate end-of-arm tooling, imported with its controller, with or without a programming pendant, constitutes a functional unit under Section XVI, Note 4, HTSUS. The whole would be classifiable, in this case, either in heading 8428 or in heading 8515, as appropriate. However, Customs has consistently expressed the opinion that classification of goods or apparatus as an incomplete or unfinished functional unit is not supported by any HTSUS legal note or by the ENs. See HQ 087077, dated March 27, 1991, HQ 962105, dated April 22, 1999. We have also held that General Explanatory Note (VII) to Section XVI, Note 4, on p. 1228, states that component parts not complying with the terms of Note 4 fall in their own appropriate headings. See HQ 960632, dated October 27, 1997, which stated in part on p.5 "Either an importation of components constitutes a complete functional unit, or each component is separately classifiable in its own appropriate heading." For this reason, we are unable to accede to your claim as a composite good under GRI 3(b), HTSUS.

A finding that an entire importation fails the functional unit test does not negate the possibility that two or more components within the importation might constitute a functional unit, if the requirements of Section XVI, Note 4, HTSUS, are met. Relevant ENs under (3) on p. 1506 include within heading 8537 apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control through digital or analog input/output modules, various types of machines. In this case, the programming pendant and the controller are individual components connected by a cable that contribute together to the function of electric control or the distribution of electricity appropriate to heading 8537.

The remaining issue is the classification of the articulated arm or manipulator as an incomplete or unfinished good, either of heading 8428 or of heading 8515. You argue that each manipulator is permanently configured for a particular service application by an erasable programmable read-only memory (EPROM) chip installed in the controller. Further, you discount the significance of the end-of-arm tooling which you contend is minimal in size when compared to the main portions of the robot. In our opinion, this argument would be more probative if the controller were incorporated in the manipulator so as to constitute a unitary article of commerce. In this case, however, it is the manipulator itself we are considering and it lacks distinguishing characteristics that would establish its essential character as a good of heading 8428 or 8516.

The ENs, at pp. 1422-1424, include within heading 8479 machines that have individual functions and which are not excluded by an applicable legal note or are more specifically provided for elsewhere in the HTSUS. Mechanical devices have an individual function even if they must be incorporated into a more complex entity, provided this function is distinct from that which is performed by the entity in which it is incorporated. A manipulator must be connected to its controller or have a controller incorporated into it in order to operate, but the specific mechanical function a manipulator performs is distinct from the function performed by the controller. The manipulators at issue have individual functions for purposes of heading 8479, and are not more specifically described in any other heading of the HTSUS. Further, the ENs include within heading 8479 industrial robots for multiple uses, those capable of performing a variety of functions simply by using different tools. However, the heading excludes industrial robots designed to perform a specific function; these are classified in the heading covering their function. Whether the mechanical units here are characterized as Industrial robots or manipulators, because they lack end-of-arm tooling they are not designed to perform a specific function, but can perform a variety of functions depending of what tool is added. We conclude that the manipulators at issue, imported without end-of-arm tooling, are provided for in heading 8479.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, the MRC, MRC II or XRC controller and programming pendant are a functional unit provided for in heading 8537. They are classifiable in subheading 8537.10.90, HTSUS. The manipulator is a machine or mechanical appliance of heading 8479. It is classifiable in subheading 8479.50.00, HTSUS.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 22, 1999.

CLA-2 RR:CR:GC 962105 JAS
Category: Classification
Tariff No. Various

PORT DIRECTOR OF CUSTOMS
P.O. Box 37260
Milwaukee, WI 53110

Re: Internal Advice 16/98; Industrial Robot Systems Imported With and Without End-of-Arm Tooling.

DEAR PORT DIRECTOR:

Your memorandum, dated June 8, 1998 (CLA-01-01:MW KK), transmitted a request for internal advice, dated May 18, 1998, from counsel for ABB Flexible Automation, Inc., concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of work piece positioners and industrial robot systems. Additional facts and legal arguments were presented by letter, dated March 30, 1999. Counsel summarized all relevant arguments at a meeting in our office on April 9, 1999.

Facts:

The merchandise in issue consists of numerous models of an industrial work piece positioner, and numerous industrial robot systems, each consisting of a robot imported with a model S4C controller. The work piece positioner is imported separately and consists of an articulated structure, similar to an arm, on a base with drilled bolt holes for attachment to a fixed surface. It may be single or dual station and rotates both vertically and horizontally to deliver work pieces to and from one or more stations on an arc welding machine. The

industrial robots each consist of an articulated structure, similar to an arm, on a base with drilled bolt holes for attachment to a fixed surface. They have lifting capacities or load ratings from 5 kilograms (11 lbs.) to 1,200 kilograms (2460 lbs.). The robots are imported either with or without end-of-arm tooling which dedicates them to a specific end-use application, such as arc welding, material handling, assembling, spraying, deburring and glueing/sealing, among others. The S4C controllers are devices which utilize preprogrammed software that contains specific operating instructions for the robot's tooling. Each is stand-alone and floor mounted and is connected to its robot by power cables and signal connectors.

Counsel for the internal advice applicant maintains that the work piece positioners are material handling devices of heading 8428, HTSUS, a function described by that heading. This is because they mechanically handle goods, that is, move goods to and away from a welding machine, for example. Counsel maintains that robot systems imported complete with end-of-arm tooling are functional units under Section XVI, Note 4, HTSUS, and are classifiable in the heading appropriate to whatever function the system performs. Counsel maintains further that robot systems imported without end-of-arm tooling are incomplete or unfinished articles and are classifiable according to the essential character of the whole. In both cases, the appropriate heading is dictated by the specific end use application of the system. Counsel contends that robot systems imported without end-of-arm tooling are not precluded from classification as incomplete or unfinished functional units because they consist of a combination of machines that are interconnected by cables, and Note 4 merely requires that they be intended to contribute to a clearly defined function described by a heading in chapter 84 or chapter 85. Alternatively, counsel maintains that robot systems imported without end-of-arm tooling are composite goods classifiable, under GRI 3(b), HTSUS, as if consisting of the component which gives the system its essential character. Counsel states that the mechanical robots and their controllers are never bought and sold, nor imported separately. For example, if a robot malfunctions the company's practice is to replace the entire system.

Your office is of the opinion that the work piece positioners do not perform a material handling function appropriate to goods of heading 8428, HTSUS; rather, they are mechanical devices that continuously present work pieces to the welding machine and, as such, are provided for in heading 8479, HTSUS, as machines and mechanical appliances not specified or included elsewhere in [chapter 84].

Issue:

Whether the work place positioners are described by heading 8428; whether the components of a robot system imported without end-of-arm tooling are composite goods classifiable in accordance with GRI 3(b) or are classifiable separately.

The provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery * * *
*	* * * *
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84]
*	* * * *
8515	* * * magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting * * *
*	* * * *
8524	Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records * * *
*	* * * *
8537	Boards, panels, consoles, desks, cabinets and other bases * * * for electric control or the distribution of electricity * * *

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 3(b) states, in part, that composite goods made up of different components shall be classified as if consisting of the component

which gives them their essential character. Chapter 85, Note 6, HTSUS, states that records, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are entered with the apparatus for which they are intended.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Concerning the work piece positioners, counsel cites the 84.28 ENs on pp. 1296 and 1298, and notes that the heading covers a wide range of machinery for the mechanical handling of materials, goods, etc., and likens the function of the work piece positioners to that of conveyors of heading 8428 used for moving goods, usually in a horizontal direction, sometimes over very long distances. Counsel states that because the work piece positioners are described by the terms of heading 8428 they are specified or included elsewhere in chapter 84. For this reason, counsel concludes they are not provided for in heading 8479. We disagree. In *HQ 957460*, dated April 26, 1995, we held that nut feeders, devices for mechanically delivering nuts to a spot welding machine, were not material handling machines of heading 8428. We noted that standard dictionaries were not helpful in defining the term **handling** as it relates to machinery of that heading. Because the work piece positioners in issue here are not conveyors, the 84.28 EN discussion of conveyors on p. 1298 does little to resolve the issue. It remains unclear whether work piece positioners are truly material *handling* machinery for purposes of heading 8428. However, on p. 1423 under (1) **MACHINERY OF GENERAL USE** the 84.79 ENs, at paragraph (3), list mechanical distributors for continuous presentation of work pieces in the same alignment ready for the working operation, not specialized for any particular industry. Submitted product literature states the various work piece positioners in issue are used with arc welding systems. But, we concluded in *HQ 957460* that welding is a process and does not denote a particular industry. As we did in that decision, we conclude that the work piece positioners in issue here are more akin by function to the cited description in the 84.79 ENs.

We agree with counsel that robot systems, each consisting of a robot with end-of-arm tooling for a specific service application, and an S4C controller with software containing instructions compatible with that service application, constitute a functional unit under Section XVI, Note 4, HTSUS. The whole, minus the software, is classifiable in the heading appropriate to whatever function the system is designed to perform. Exceptions to this would be systems designed for glueing/sealing and for assembly applications. Machines that perform these functions are generally classified in heading 8479. However, we have consistently held that functional units cannot be classified in heading 84.79 as that heading does not describe any machine by a clearly defined function. See *HQ 958629*, dated February 21, 1996, and related cases. For this reason, we will address the classification of robot systems for glueing/sealing and for assembly operations later in this ruling. The software in all cases remains separately classified in heading 8524, in accordance with Chapter 85, Note 6, HTSUS.

We conclude that robot systems, each consisting of a robot without end-of-arm tooling, but with an S4C controller and software compatible with a specific service application do not constitute functional units under section XVI, Note 4, HTSUS. See *HQ 087077*, dated March 27, 1991, *HQ 957150*, dated January 30, 1995, *HQ 960632*, dated October 27, 1997, and related cases. Counsel's alternative claim is that the robot systems, as described, qualify as composite goods under GRI 3(b), HTSUS, and are thus classifiable as if consisting of that component which imparts the essential character. Relative ENs under (IX) on p. 4 state in part that composite goods may include those with separable components, provided the components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts. In this case, counsel maintains the components of these systems are always imported together, that the individual components are never imported separately. For example, if a robot were to malfunction the entire system would be replaced. In our opinion, evidence of how one company structures its importations is not conclusive of how the goods are normally imported or bought and sold. On the contrary, we are informed that industrial robots and process controllers are often imported separately. The available evidence does not support a conclusion that industrial robots without end-of-arm tooling and their controllers qualify as composite goods for tariff purposes. For this reason, the components must be separately classified.

Relevant ENs under (3) on p. 1506 include within heading 8537 apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control through digital or analog input/output modules, various types of machines. The S4C controllers conform to this description. The ENs, at pp. 1422-1424, include within heading 8479 machines that have individual functions and which are not excluded by an applicable legal note or are more specifically provided for elsewhere in the HTSUS. Mechanical devices have an individual function even if they must be incorporated into a more complex entity, provided this function is distinct from that which is performed by the entity in which it is incorporated. A robot must be connected to its controller or have a controller incorporated into it in order to operate, but the specific mechanical function a robot performs is distinct from the function performed by the controller. The robots in issue have individual functions for purposes of heading 8479, and are not more specifically described in any other heading of the HTSUS. Further, the ENs include within heading 8479 industrial robots for multiple uses, those capable of performing a variety of functions simply by using different tools. However, the heading excludes industrial robots designed to perform a specific function; these are classified in the heading covering their function. Industrial robots without end-of-arm tooling are not designed to perform a specific function, but can perform a variety of functions depending of what tool is added. The robots in issue imported without end-of-arm tooling are provided for in heading 8479.

Holding:

Under the authority of GRI 1, the work piece positioners are provided for in heading 8479. They are classifiable in subheading 8479.89.97, HTSUS.

Under GRI 1, industrial robot systems, other than glueing/sealing systems and assembly systems, each consisting of a robot with end-of-arm tooling which dedicates them to a specific end use service application, and a model S4C controller, are functional units under Section XVI, Note 4, classifiable in the heading appropriate to that function.

Under GRI 1, the components of industrial robot systems, each consisting of a robot without end-of-arm tooling and a model S4C controller, are separately classifiable, in subheading 8479.50.00, HTSUS, as industrial robots not elsewhere specified or included, and in subheading 8537.10.90, HTSUS, as other bases for electric control or the distribution of electricity, respectively. The components of the glueing/sealing system and the assembly system are similarly classifiable.

In all cases, the preprogrammed software the S4C controller utilizes is classified in appropriate subheadings of heading 8524, in accordance with Chapter 85, Note 6, HTSUS.

You are to mail this decision to the internal advice applicant, through its representative, no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustras.gov, by means of the Freedom of Information Act, and other methods of public distribution.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, February 27, 2002.
CLA-2 RR:CR:GC 965123 JAS
Category: Classification
Tariff No. 7326.90.85 and 8418.99.80

NANCY PELLOWE
TECUMSEH PRODUCTS COMPANY
100 East Patterson Street
Tecumseh, MI 49286

DEAR MS. PELLOWE:

In your letter to the Director of Customs National Commodity Specialist Division, New York, dated June 25, 2001, you inquire as to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a condensing unit, and parts, for use in refrigeration applications. You provided additional information to the New York office in an undated facsimile transmittal, which included a drawing and copies of product literature. Your letter was referred to this office for reply. We regret the delay in responding.

Facts:

The articles at issue are a condensing unit, identified as part 2B3142-1, a vertical receiver, identified as part 51080, and a capacitor mounting bracket, identified as part 57068-2. The condensing unit consists of a compressor, a finned coil-type condenser you describe as a heat exchanger, and a fan with motor, all mounted onto a common base. You indicate the unit is principally used in refrigeration applications. The vertical receiver is basically a shell with connections, whose purpose is to hold refrigerant. The capacitor mounting bracket is of base metal and functions to attach a capacitor (a device which helps in starting or running the compressor) directly onto the compressor or elsewhere on the condensing unit, as the customer designates.

As imported, the condensing unit lacks an evaporator which you indicate is necessary to allow the apparatus to function as refrigeration equipment. After importation, the evaporator will be connected to the condensing unit by brazing tubes with or without fittings. Company guidelines state the distance between condensing unit and evaporator should not normally exceed 100 ft.

The HTSUS provisions under consideration are as follows:

7326	Other articles of iron or steel:
7326.90	Other:
7326.90.85	Other
	* * * * *
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; * * * parts thereof:
	Other refrigerating or freezing equipment; * * *:
8418.61.00	Compression type units whose condensers are heat exchangers
	Parts:
8418.99.80	Other

Issue:

Whether the condensing unit, as described, imported without an evaporator, constitutes refrigerating or freezing equipment of heading 8418, HTSUS, or parts of such equipment under the same heading.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level.

Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant ENs on p. 1431 state that compression type refrigerators of heading 8418 consist of the following essential elements: (1) The compressor which receives expanded gas from the evaporator and delivers it under pressure to (2) the condenser or liquefier where the gas is cooled and liquefied, and (3) the evaporator. The active cooling element, consisting of a tubular system in which the condensed refrigerant, released through an expansion valve, evaporates rapidly with the absorption of heat from the surrounding air or, in the case of large cooling installations, from brine or a solution of calcium chloride kept in circulation around evaporator coils. The instant importation lacks the evaporator which you note is essential for the apparatus to function as refrigerating equipment. However, you note that the ENs continue by stating that apparatus of the foregoing kinds (i.e., compression type refrigerators) are classified in heading 8418 if in the form of units comprising a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator. On the basis of this statement in the ENs, you contend that the condensing unit, imported without an evaporator, constitutes compression type refrigeration or freezing equipment of the kind described in subheading 8418.61.00, HTSUS.

The classification of the merchandise at issue in heading 8418 is governed by the legal notes to Section XVI, HTSUS. Section XVI, Note 4, HTSUS, states in part that where a machine, including a combination of machines, consists of individual components, whether separate or interconnected by piping, by transmission devices, by electric cables or other devices, intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole is to be classified in the heading appropriate to that function. The General ENs on p. 1388 state that Note 4 applies whether the various components (for convenience or other reasons) remain separate or are interconnected by piping (carrying air, compressed gas, oil, etc.), by devices used to transmit power, by electric cables or by other devices. The ENs continue by stating Note 4 covers only machines and combinations of machines essential to the function specific to the functional unit as a whole, and thus excludes machines or appliances fulfilling auxiliary functions and which do not contribute to the function of the whole. Among the examples of functional units listed on p. 1388 is refrigerating equipment consisting of components which are not fitted together to form a whole and are interconnected by means of piping through which the coolant circulates (heading 84.18). Finally, the ENs state on p. 1389 that component parts not complying with the terms of Note 4 fall in their own appropriate headings.

The functional unit concept in Section XVI, Note 4, is a classification at the GRI 1 level, and applies to finished or complete goods. We have ruled consistently that there is no legal authority to classify incomplete or unfinished goods as functional units. See HQ 960632, dated October 27, 1997, HQ 957150, dated January 30, 1995, and cases cited. Because the condensing unit, as described, lacks the evaporator necessary to allow the entire apparatus to function as refrigeration equipment, classification in subheading 8418.61.00, HTSUS, is not appropriate.

With respect to goods that qualify as parts of machines or apparatus of chapters 84 or 85, Section XVI, Note 2(b), HTSUS, requires that they be classified with the machines with which they are solely or principally used. You indicate that while the condensing unit has air conditioning applications it is principally used for refrigeration. Based on this assertion, classification of the condensing unit as parts of refrigeration equipment, in heading 8418, appears warranted. Under the same rationale the vertical receiver would be similarly classified.

If the capacitor mounting bracket is imported attached to the compressor or elsewhere on the condensing unit, the whole would be regarded as a part of refrigeration equipment under heading 8418. If imported separately, however, as appears likely, it would be considered an article of iron or steel of heading 7326. We note that heading 8302, HTSUS, in part covers base metal hat racks, hat-pegs, brackets and similar articles. But, brackets that attach capacitors to printed circuit boards do not appear to be akin, by function or design, to the class or kind of goods encompassed by heading 8302.

Holding:

Under the authority of GRI 1 and Section XVI, Note 2(b), HTSUS, the condensing unit, part 2B3142-1, and the vertical receiver, part 51080, are provided for in heading 8418.

They are classifiable as parts of refrigeration equipment, in subheading 8418.99.80, HTSUS. The capacitor mounting bracket, part 57068-2, is classifiable in subheading 7326.90.85 or in subheading 8418.99.80, HTSUS, as appropriate.

We are forwarding copies of this decision to the Customs ports of Tacoma, Los Angeles/Long Beach, Norfolk and Miami, for their guidance in classifying this merchandise.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965634 JAS
Category: Classification
Tariff No. 9027.20.40

ROLAND L. SHRULL
MIDDLETON & SCHRULL
44 Mall Road, Suite 106
Burlington, MA 01803

Re: Chromatograph; Instruments and Apparatus for Physical or Chemical Analysis; HQ 087077 Modified.

DEAR MR. SHRULL:

In HQ 087077, issued to the District (now Port) Director of Customs, Boston, on March 27, 1991, as a response to Internal Advice 25/90, on behalf of VG Instruments, Inc., we held, among other things, that a chromatograph and a chromatography server, imported together, were separately classifiable, in headings 9027 and 8741, Harmonized Tariff Schedule of the United States (HTSUS), respectively. The ruling stated that without the automatic data processing (ADP) machine which receives digitally-formatted data from the server, the apparatus would qualify as an "unfinished functional unit" which is not sanctioned by any HTSUS legal note. We have reconsidered the classification of this merchandise and determined that it is incorrect.

Facts:

The merchandise in IA 25/90, the Chromatography Data Management System, consisted of a chromatography server, the chromatograph, used by chemists and others to analyze and measure the constituents in gases or liquids, and an automatic data processing (ADP) unit. The server was said to act as an interface between the chromatograph and the ADP unit by converting analog data received from the chromatograph into digital format, then transmitting that data to the ADP unit. The individual components were connected by electrical cables. Although HQ 087077 considered several proposed import configurations, the specific importation consisting of a chromatography server and a chromatograph without the ADP unit is at issue here. The ruling concluded that "because there are no HTSUS legal notes that provide for unfinished functional units" the server and chromatograph were to be classifiable separately. After a thorough review of the matter, we have determined that this is incorrect and no longer represents Customs position in the matter.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.99.90 (now 90.00)	Other
9027	Instruments and apparatus for physical or chemical analysis * * *, instruments and apparatus for measuring or checking viscosity, porosity, expansion * * * or the like * * *:

9027.20

Chromatographs and electrophoresis instruments:

9027.20.40 (now 50)

Electrical

Issue:

Whether a chromatography server imported with a chromatograph, but without an automatic data processing (ADP) unit, is an incomplete or unfinished good that contributes to a clearly defined function described in heading 9027.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 2(b), HTSUS, extends the scope of a heading to include goods imported incomplete or unfinished provided that, as imported, the incomplete or unfinished good has the essential character of the complete or finished good.

Section XVI, Note 4, HTSUS, covers machines consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85. The whole, in such cases, is classified in the heading appropriate to that function. Chapter 90, Note 3, HTSUS, applies Note 4 to Section XVI, to goods of Chapter 90.

In the request for internal advice that resulted in HQ 087077, you contended that an importation of a chromatograph and server constituted a functional unit classifiable in subheading 90.27.20.40, HTSUS. We rejected that classification on the basis that the ADP unit, missing in this case, was necessary to complete the functional unit.

By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The facts here establish that the chromatography server is significant because it integrates input signals, hence it eliminates high frequency noise and protects the integrity of the signals. In addition, if the host computer goes off-line, the server can direct data to alternate computers in the network, and if the entire system goes down, the server can store data until a suitable host computer can be found. Thus, no data is lost. Of course, the ADP unit is equally significant as it is the computer that processes and arranges the data into a usable format. However, it is the chromatograph that performs the actual analyzing and/or measuring function. The chromatograph is the very heart of the Chromatography Data Management System. For this reason, we conclude that an importation consisting of a chromatography server and a chromatograph represents the aggregate of distinctive component parts that establish the identity of the importation as apparatus performing the clearly defined function of chromatography described in heading 9027.

Holding:

Under the authority of GRI 2(a) and Section XVI, Note 4, HTSUS, as applied by Chapter 90, Note 3, HTSUS, a chromatography server and chromatograph, imported together, constitute a functional unit, incomplete or unfinished, provided for in heading 9027. Actual classification is in subheading 9027.20.40, HTSUS. HQ 087077, dated March 27, 1991, is modified as to this merchandise.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965635 JAS
Category: Classification
Tariff No. 8418.61.00

Ms. NANCY PELLOWE
TECUMSEH PRODUCTS COMPANY
100 East Patterson Street
Tecumseh, MI 49286

Re: Condensing Unit and Vertical Receiver for Use in Refrigeration; HQ 965123 Re-
voked.

DEAR Ms. PELLOWE:

In HQ 965123, which we issued to you on February 27, 2002, a condensing unit and a vertical receiver were held to be other parts of refrigerating or freezing equipment, in heading 8418, Harmonized Tariff Schedule of the United States (HTSUS), and a capacitor mounting bracket was held to be an article of iron or steel of heading 7326, HTSUS. We have reconsidered the classification of this merchandise and determined that it is incorrect.

Facts:

As stated in HQ 965123, the articles at issue are a condensing unit, identified as part 2B3142-1, a vertical receiver, identified as part 51080, and a capacitor mounting bracket, identified as part 57068-2. The condensing unit consists of a compressor, a finned coil-type condenser you describe as a heat exchanger, and a fan with motor, all mounted onto a common base. You indicate the unit is principally used in refrigeration applications. The vertical receiver is basically a shell with connections, whose purpose is to hold refrigerant for the condensing unit. The capacitor mounting bracket is of base metal and functions to attach a capacitor (a device which helps in starting or running the compressor) directly onto the compressor or elsewhere on the condensing unit, as the customer designates.

As imported, the condensing unit lacks an evaporator which you indicate is necessary to allow the apparatus to function as refrigeration equipment. After importation, the evaporator will be connected to the condensing unit by brazing tubes with or without fittings. Company guidelines state the distance between condensing unit and evaporator should not normally exceed 100 ft.

The HTSUS provisions under consideration are as follows:

8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; * * * parts thereof:
	Other refrigerating or freezing equipment; * * *:
8418.61.00	Compression type units whose condensers are heat exchangers
	Parts:
8418.99.80	Other

Issue:

Whether the condensing unit, vertical receiver and capacitor mounting bracket, imported without an evaporator, constitute refrigerating or freezing equipment of heading 8418, HTSUS, or parts of such equipment under the same heading.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. Section XVI, Note 4, HTSUS, states in part that where a machine, including a combination of machines, consists of individual components, whether separate or interconnected by piping, by transmission devices, by electric cables or other devices, intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole is to be classified in the heading appropriate to that function.

In your ruling request of June 25, 2001, which resulted in HQ 965123, you requested classification in subheading 8418.61.00, HTSUS, as other refrigerating or freezing equipment, compression type units whose condensers are heat exchangers. You cited relevant 8418 ENs which, you indicated, stated that apparatus of heading 8418 included units comprising a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator.

We rejected your claim on the basis that it involved application of the functional unit concept found in Section XVI, Note 4 which, we stated, is a classification at the GRI 1 level, and applies to finished or complete goods. Because the condensing unit lacked the evaporator necessary to its function as refrigerating equipment, the good, as imported, was considered incomplete or unfinished. We concluded that there is no legal authority to classify incomplete or unfinished goods as functional units. We have undertaken a thorough review of the matter and now conclude that this is incorrect and no longer represents Customs position on this issue.

By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The cited 8418 ENs establish that compression-type refrigerators are classified in heading 8418 if comprising a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator. The evaporator will be connected to the condensing unit after importation by brazing tubes with or without fittings. Based on the cited ENs, we conclude that an importation consisting of a compressor with fan and motor, and a condenser together, in this case, with a vertical receiver to hold refrigerant and a capacitor mounting bracket, represents the aggregate of distinctive component parts that establish the identity of the goods as other refrigerating or freezing equipment of heading 8418. If imported separately, however, the capacitor mounting bracket would be classifiable in subheading 8418.99.80, HTSUS, in accordance with NY H82804, dated June 29, 2001.

Holding:

Under the authority of GRI 2(a) and Section XVI, Note 4, HTSUS, the condensing unit, part 2B3142-1, the vertical receiver, part 51080, and the capacitor mounting bracket, part 57068-2, are provided for in heading 8418. They are classifiable as other refrigeration or freezing equipment, compression-type units whose condensers are heat exchangers, in subheading 8418.61.00, HTSUS. HQ 965123, dated February 27, 2002, is revoked.

JOHN DURANT,

Director,

Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:GC 965637 JAS

Category: Classification

Tariff No. Various

BETH RING
LARRY ORDET
SANDLER, TRAVIS & ROSENBERG, PA.
5200 Blue Lagoon Drive
Miami, FL 33126-2022

Re: Dedicated Robot Systems; HQ 962105 Modified.

DEAR MS. RING AND MR. ORDET:

In HQ 962105, issued to the Port Director, Milwaukee, on April 22, 1999, as a response to Internal Advice 16/98, initiated on behalf of ABB Flexible Automation, Inc., certain industrial robot systems imported without end-of-arm tooling, among other articles, were held to be classifiable in headings 8479 and 8537, Harmonized Tariff Schedule of the United States (HTSUS), respectively. We have reconsidered the classification of this merchandise and determined that it is incorrect. The classification both of robot systems imported with end-of-arm tooling and work piece positioners expressed in I.A. 16/98 is not at issue here.

Facts:

As described in HQ 962105, the merchandise consists of numerous industrial robot systems, each consisting of a robot imported with a model S4C controller. The robots each consist of an articulated structure, similar to an arm, on a base with drilled bolt holes for attachment to a fixed surface. They have lifting capacities or load ratings from 5 kilograms (11 lbs.) to 1,200 kilograms (2460 lbs.). The robots are imported without end-of-arm tooling which dedicates them to a specific end-use service application, such as arc welding, material handling, assembling, spraying, deburring and glueing/sealing, among others. The S4C controllers are devices which utilize preprogrammed software that contains specific operating instructions for the robot's tooling. Each is stand-alone and floor mounted and is connected to its robot by power cables and signal connectors.

Issue:

Whether the robot systems, as described, imported without end-of-arm tooling, constitute functional units, incomplete or unfinished, under Section XVI, Note 4, HTSUS; whether any functional unit is eligible for classification in heading 8479, HTSUS.

The provisions under consideration are as follows:

- | | |
|-------------|--|
| 8428 | Other lifting, handling, loading or unloading machinery * * * |
| 8479 | Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84] * * * |
| 8515 | * * * magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting * * * |
| 8537 | Boards, panels, consoles, desks, cabinets and other bases * * * for electric control or the distribution of electricity * * *. |

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 2(a) in part extends the terms of a heading to include incomplete or unfinished articles provided that, at importation, they have the essential character of the complete or finished article.

Section XVI, Note 4, HTSUS, states that machines (including a combination of machines) consisting of individual components (whether separate or interconnected by pip-

ing, by transmission devices, by electric cables or other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85, then the whole falls to be classified in the heading appropriate to that function.

You originally contended that each robot system consisting of a robot and its process controller with task-specific software, imported without end-of-arm tooling, is not precluded from classification as a functional unit inasmuch as the components were *intended* to contribute together to a clearly defined function. Alternatively, you asserted that each robot system is a composite good, and that the essential character of each is imparted by the process controller which dedicates the whole to the specific function performed by the end-of-arm tooling.

We rejected the first contention on the basis that "the classification of goods or apparatus as an incomplete or unfinished functional unit is not supported by any HTSUS legal note [or by the ENs]." However, we have undertaken a thorough review of the matter and now conclude that this is incorrect and no longer represents Customs position on this issue. By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The facts here establish that each articulated arm or manipulator is permanently configured for a particular service application by an erasable programmable read-only memory (EPROM) chip installed in the controller. In addition, it is indicated that the manipulator dedicated for material handling, for example, has a particular load rating that is suitable only for that service application. There are no generic or general purpose robot systems; each is specially configured to perform one specific function. Further, the end-of-arm tooling represents a rather small percentage of the total value of the completed robot. Under the particular facts presented, we conclude that an importation consisting of an articulated arm or manipulator and process controller, in which the end use service application of the whole is clearly identifiable, represents the aggregate of distinctive component parts that establish the identity of the good as, for example, material handling machinery of heading 8428, HTSUS, or as electric welding machines or apparatus of heading 8515, HTSUS, etc. The software in all cases remains separately classified in heading 8524, HTSUS, in accordance with Chapter 85, Note 6, HTSUS.

With respect to a robot system which, in accordance with this decision, would be classifiable as a functional unit, imported incomplete or unfinished, HQ 962105 stated on p. 5, "[W]e have consistently held that functional units cannot be classified in heading 8479, HTSUS, as that heading does not describe any machine by a clearly defined function." This statement is incorrect and no longer represents Customs position on this issue. A fair and reasonable reading of Section XVI, Note 4, HTSUS, leads us to conclude that goods qualifying as functional units, incomplete or unfinished, are eligible for classification in heading 8479, HTSUS, provided it is the heading appropriate to the function performed by the whole, and the terms and conditions for classification in heading 8479 are satisfied.

Holding:

Under GRI 2(a) and Section XVI, Note 4, HTSUS, industrial robot systems, each consisting of a robot and a model S4C controller, the whole dedicated to a specific end use service application which is clearly identifiable, but imported without end-of-arm tooling, constitute functional units, classifiable in the heading appropriate to the function of the whole.

HQ 962105 is modified to recognize both the tariff concept of incomplete or unfinished functional units, and the position that functional units are eligible for classification in heading 8479, HTSUS. In all cases, the preprogrammed software the S4C controller uti-

lizes is classified in appropriate subheadings of heading 8524, in accordance with Chapter 85, Note 6, HTSUS.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965638 JAS

Category: Classification

Tariff No. 8428.90.00, 8515.21.00, and 8515.31.00

MR. PAUL S. ANDERSON
SONNENBERG & ANDERSON
200 South Wacker Drive, 38th Floor
Chicago, IL 60606

Re: Industrial Robots With Stand-Alone Controller but Without End-of-Arm Tooling;
HQ 963029 Revoked.

DEAR MR. ANDERSON:

In HQ 963029, issued to you on July 7, 2000, on behalf of Motoman, Inc., program controllers designated MRC, MRC II or XRC, and a programming or teaching pendant, were held to be a functional unit classifiable in a provision of heading 8537, Harmonized Tariff Schedule of the United States (HTSUS). The SK and SV series electrically controlled industrial robots, each consisting of an articulated arm or manipulator on a base, but without appropriate end-of-arm tooling, were held to be separately classifiable in heading 8479, HTSUS. We have reconsidered the classification of this merchandise and now believe that it is incorrect.

Facts:

The articles at issue are the SK and SV series electrically controlled industrial robots. Each consists of an articulated arm or manipulator on a base, a controller designated MRC, MRC II or XRC, and a programming or teaching pendant. Prior to importation, each robot is "configured," that is, a program of instructions to implement the robot's intended end use service application is burned onto a chip that becomes a permanent part of the controller, which is stand-alone and connected to the manipulator by electrical wiring or cables. The programming pendant is hand-held and attaches by cable to the controller. It functions as an input device that sends operating instructions in the form of signals which the controller interprets and uses to instruct the manipulator.

Although each robot series is best suited, in terms of size, payload capacity and power, for certain applications, the vast majority in this case are specified as being for arc welding, resistance welding, or for material handling. As imported, the robots lack welding guns, grippers or other end-of-arm tooling.

The HTSUS provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery * * *:
8428.90.00	Other machinery
	* * * * *
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 85] * * *:
8479.50.00	Industrial robots, not elsewhere specified or included
	* * * * *
8515	Electric * * * soldering, welding or brazing machines and apparatus * * *.

	Machines and apparatus for resistance welding of metal:
8515.21.00	Fully or partly automatic
8537	*** other bases *** for electric control or the distribution of electric- ity:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other

Issue:

Whether an articulated arm/manipulator, process controller and programming pendant imported together, but without end-of-arm tooling, constitutes a functional unit, imported incomplete or unfinished.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 2(a), HTSUS, extends the terms of a heading to include goods imported incomplete or unfinished provided that, as imported, the incomplete or unfinished article imparts the essential character to the complete or finished good.

Section XVI, Note 4, HTSUS, covers machines consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85. The whole, in such cases, is classified in the heading appropriate to that function.

In the ruling request that resulted in HQ 963029, you contended that each model in the industrial robot series, with its process controller and programming pendant, constituted an incomplete or unfinished article under General Rule of Interpretation (GRI) 2(a), HTSUS, having the essential character, in this case, of material handling machinery of heading 8428, HTSUS, or of a welding machine of heading 8515, HTSUS. We rejected that contention on the basis that "the classification of goods or apparatus as an incomplete or unfinished functional unit is not supported by any HTSUS legal note [or by the ENs]." We have undertaken a thorough review of the matter and now conclude that this position is incorrect and no longer represents Customs position on this issue.

By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The facts here establish that each articulated arm or manipulator is permanently configured for a particular service application by an erasable programmable read-only memory (EPROM) chip installed in the controller. In addition, it is indicated that the manipulator dedicated for material handling has a particular load rating that is suitable only for that service application. Further, the end-of-arm tooling represents a rather small percentage of the total value of the completed robot. Under the particular facts presented, we conclude that an importation consisting of an articulated arm or manipulator and process controller with programming pendant, represents the aggregate of distinctive component parts that establish the identity of the good as material handling machinery of heading 8428 or as electric welding machines or apparatus of heading 8515, as appropriate.

Holding:

Under the authority of GRI 2(a) and Section XVI, Note 4, HTSUS, an articulated arm or manipulator imported with its configured process controller and programming pendant,

constitute a functional unit provided for in headings 8428 and 8515. Actual classification is in subheading 8428.90.00, HTSUS, and in subheadings 8515.21.00 and 8515.31.00, HTSUS. HQ 963029, dated July 7, 2000, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN WOVEN PAPER PLACE MATS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter and revocation of treatment relating to the classification of certain woven paper place mats (placemats).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain woven paper placemats. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published April 17, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 16. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 927-1735.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public

with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the April 17, 2002, CUSTOMS BULLETIN, Vol. 36, No. 16, proposing to modify New York Ruling Letter (NY) E88353 (November 16, 1999), relating to the tariff classification of a certain woven paper placemat, and to revoke any treatment accorded to substantially identical transactions. The period to submit comments expired on May 17, 2002. No comments were received.

In New York Ruling Letter (NY) E88353, dated November 16, 1999, the Customs Service classified a certain woven paper placemat under subheading 6302.59.0020, HTSUSA, which covers other table linen of other textile materials.

It is now Customs position that the proper classification for the woven paper placemat is subheading 4601.99.0500, HTSUSA, as plaits and similar products of plaiting materials. Headquarters Ruling Letter (HQ) 965233 modifying NY E88353 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to one ruling letter, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying, in part, NY E88353 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965233, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: May 21, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, May 21, 2002.

CLA-2 RR:CR:TE 965233 ttd

Category: Classification

Tariff No. 4601.99.0500

Ms. LISA RAGAN

LISA RAGAN CUSTOMS BROKERAGE

795 Terrell Mill Rd., Suite 207

College Park, GA 30349

Re: Modification of New York Ruling Letter E88353, dated November 16, 1999.

DEAR Ms. RAGAN:

This is in response to your letter, dated June 1, 2001, filed on behalf of Fashion Industries, requesting reconsideration, in part, of New York Ruling Letter (NY) E88353, dated November 16, 1999, regarding classification of a round woven place mat under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Your letter, which was originally submitted to the Customs National Commodity Specialist Division in New York, was referred to this office for reply. We note that a new sample representative of the original, but blue in color, was submitted and considered for this reconsideration. After review of NY E88353, Customs has determined that the classification of the round woven place mat in subheading 6302.59.0020, HTSUSA, was incorrect. For the reasons that follow, this ruling modifies, in part, NY E88353.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY E88353 was published on April 17, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 16. As explained in the notice, the period within which to submit comments on this proposal was until May 17, 2002. No comments were received in response to this notice.

Facts:

In NY E88353, the round place mat under consideration was classified in subheading 6302.59.0020, HTSUSA, which provides for other table linen of other textile materials. The article at issue is a round, woven paper place mat (placemat). The circular mat is blue in color, about 15 inches in diameter and is constructed of woven paper strips having a width of approximately 1 millimeter (mm). The strips of paper have been folded longitudinally before being woven into the mat.

Your submission of June 1, 2001, suggested classification of the subject merchandise in heading 4818, HTSUSA, as household articles of paper, including tablecloths and table napkins.

Issue:

Whether the subject merchandise is classifiable in heading 6302, HTSUSA, which provides for, *inter alia*, table linen; heading 4818, HTSUSA, which provides for, *inter alia*, various household articles made of paper; or heading 4601, HTSUSA, which provides for, *inter alia*, plaits and similar products of plaiting materials.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level

(for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 6302, HTSUSA, provides for, *inter alia*, table linen. The EN state that the heading includes "[t]able linen, e.g., table cloths, table mats and runners, tray cloths, table centers, serviettes, tea napkins, sachets for serviettes, doilies, drip mats" (emphasis added). The EN also state that these articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc. Accordingly, to be classifiable as table linen in heading 6302, HTSUSA, the woven paper placemat at issue must be constructed of paper yarn within Section XI, HTSUSA, which covers textiles and textile articles. Pursuant to Section XI, the classification of paper yarns is governed by heading 5308, HTSUSA, which expressly provides for, *inter alia*, paper yarn. The EN to heading 5308 explain that paper yarn is obtained by twisting or rolling lengthwise strips of moist paper. See e.g., HQ 957758, dated June 23, 1995 (wherein Customs found a paper handbag to be made of paper yarn). The EN further state that the heading does not cover paper simply folded one or more times lengthwise.

In NY E88353, when the merchandise at issue was initially examined, Customs believed that the subject placemat was made of paper yarn, and therefore classifiable in heading 6302, HTSUSA, as table linen. After further review, we find that the subject placemat, unlike the handbag at issue in HQ 957758, is not constructed of paper yarn. The placemat under consideration is constructed of paper strips folded longitudinally and woven into the shape of the placemat. The instant strips of paper are neither twisted nor rolled. As the subject paper strips have been folded longitudinally and not twisted or rolled prior to being woven, the placemat is not made of paper yarn in the manner defined by heading 5308, HTSUSA. Accordingly, the subject item is not properly classifiable in heading 6302, HTSUSA, as table linen.

Heading 4818, HTSUSA, provides, *inter alia*, for various household articles made of paper, including tablecloths and table napkins. Note 1(j) to Chapter 48, HTSUSA, provides that articles of Chapter 46 (manufactures of plaiting material) are not covered in Chapter 48. Note 1 of Chapter 46, HTSUSA, defines "plaiting materials" as materials in a state or form suitable for plaiting, interlacing or similar processes, including strips of paper.

Although made of paper, the placemat under consideration is more accurately described as made of woven paper strips, having an approximate width of 1 mm. These strips of paper have been folded longitudinally before being woven into the circular placemat. Accordingly, the subject paper strips are "plaiting materials" as defined by the Note 1 of Chapter 46. Therefore, based on Note 1(j) to Chapter 48, HTSUSA, the subject placemat is excluded from Chapter 48 and not properly classifiable in heading 4818, HTSUSA, as household articles of paper, including tablecloths and table napkins.

Heading 4601, HTSUSA, provides for plaits and similar products of plaiting materials, whether or not assembled into strips, plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens). The EN to heading 4601 provide in pertinent part that goods covered under heading 4601, HTSUSA, including mats, are "either formed of strands woven together, generally in the manner of heading and weft fabrics, or they may be made of parallel strands placed side by side and maintained in position in the form of sheets by transverse binding threads or strands holding the successive parallel strands." Thus, the language indicates that the mats covered in heading 4601, HTSUSA, may be woven with a generally warp and weft-like orientation. See HQ 961103, dated September 24, 2001.

In HQ 082996, dated August 22, 1989, Customs ruled that a plaited paper handbag, constructed of strips of paper woven together in a warp and weft manner, was properly classified in heading 4602, HTSUSA, as an other article made up from goods of heading 4601. Moreover, in HQ 087352, dated January 14, 1991, Customs classified a placemat of woven abaca strips in heading 4601, HTSUSA, as matting. See also HQ 084801, dated September 7, 1989.

The strips of paper composing the placemat at issue, like the paper strips in HQ 082996, are plaiting materials as defined in Note 1 of Chapter 46, HTSUSA, as they are suitable for weaving or plaiting the shape of the subject placemat. Moreover, the placemat under consideration, like the placemat in HQ 084801, is a mat as contemplated by heading 4601,

HTSUSA. The subject placemat is also woven with a basic warp and weft-like orientation as described in the EN to heading 4601. Accordingly, the subject placemat is a product of plaiting materials properly classifiable in heading 4601, HTSUSA.

As the subject woven paper placemat is made of plaited paper strips, it is classifiable under subheading 4601.99.0500, HTSUSA, which provides for plaiting materials, * * * bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens) * * * other.

Holding:

Based on the foregoing, the subject merchandise is classified in subheading 4601.99.0500, HTSUSA, which provides for "Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens): Other: Other: Plaits and similar products of plaiting materials, whether or not assembled into strips." The applicable rate of duty is 2.7 percent *ad valorem*. Articles within this subheading, regardless of origin, are not subject to quota or visa requirements.

NY E88353 is hereby modified, in part. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

**REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN
TWISTED NYLON YARN ON A SPOOL**

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of certain twisted nylon yarn on a spool.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain twisted nylon yarn on a spool. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published April 17, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 16. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 927-1735.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the April 17, 2002, CUSTOMS BULLETIN, Vol. 36, No. 16, proposing to revoke New York Ruling Letter (NY) H856147 (August 30, 2001), relating to the tariff classification of certain twisted nylon cord on a spool, and to revoke any treatment accorded to substantially identical transactions. The period to submit comments expired on April 17, 2002. No comments were received.

In New York Ruling Letter (NY) H85147, dated August 30, 2001, the Customs Service classified certain twisted nylon yarn on a spool under subheading 5406.10.0090, HTSUSA, which provides for man-made filament yarn (other than sewing thread), put up for retail sale: synthetic filament yarn: other.

After review of NY H85147, Customs has determined that the proper classification for the twisted nylon yarn on a spool is subheading 5402.61.0000, HTSUSA, as synthetic filament yarn (other than sewing thread), not put up for retail sale, * * *: other yarn, multiple (folded) or cabled. Headquarters Ruling Letter (HQ) 965347 revoking NY H85147 is set forth in the Attachment to this document.

Although in this notice customs is specifically referring to one New York Ruling Letter (NY), this revocation covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H85147, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965347, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: May 21, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, May 21, 2002.
CLA-2 RR:CR:TE 965347 ttd
Category: Classification
Tariff No. 5402.61.0000

BRENDA E. SMITH
IMPORT SUPERVISOR
FRITZ COMPANIES, INC.
7001 Chatham Center Dr., Suite 100
Savannah, GA 31419

Re: Revocation of New York Ruling Letter H85147, dated August 30, 2001.

DEAR MS. SMITH:

This letter is pursuant to Customs reconsideration of New York Ruling Letter (NY) H85147, dated August 30, 2001, filed on behalf of Lowes Companies, Inc., regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain twisted nylon yarn on a spool. After review of NY H85147, Customs has determined that the classification of the twisted nylon yarn on a spool in subheading 5406.10.0090, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY H85147.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY H85147 was published on April 17, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 16. As explained in the notice, the period within which to submit comments on this proposal was until May 17, 2002. No comments were received in response to this notice.

Facts:

The merchandise at issue is a three-ply, twisted, nylon yarn on a spool (#18) described as having a diameter of .06 inches and linear weight of 10 grams per 10 meters, with a decitex of 1,000. A visual examination of the item reveals that the yarn is composed of three individual strands of synthetic multifilament nylon yarn, twisted counter-clockwise, in excess of 50 turns per meter. The yarn is orange in color and wrapped on a black plastic spool with a revolving handle.

Issue:

Whether the subject merchandise is classifiable in heading 5406, HTSUSA, which provides for man-made filament yarn (other than sewing thread), put up for retail sale or in heading 5402, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Section XI, Chapter 54, HTSUSA, provides for man-made filaments. Note 1 to Chapter 54 provides that the terms "man-made", "synthetic" and "artificial" shall have the same meanings when used in relation to textile materials. Within Chapter 54, the competing headings under consideration are heading 5406, HTSUSA, which provides for man-made filament yarn (other than sewing thread), put up for retail sale and heading 5402, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale.

Heading 5406, HTSUSA, provides for man-made filament yarn put up for retail sale. Note 4(A)(a)(i) to Section XI, HTSUSA, defines the term "put up for retail sale" as put up on cards, reels, tubes or similar supports, of a weight (including support) not exceeding 85 grams in the case of man-made filament yarn. The subject merchandise is twisted nylon filament yarn on a spool and it weighs 161.2 grams, including the spool. As the merchandise under consideration weighs more than 85 grams, it does not satisfy the definition of "put up for retail sale." Moreover, none of the exceptions to the term "put up for retail sale" listed in Note 4(B) to Section XI, HTSUSA, apply to the merchandise under consideration. Thus, the subject nylon yarn on a spool is not properly classifiable in heading 5406, HTSUSA, as man-made filament yarn put up for retail sale.

Having precluded classification in heading 5406, HTSUSA, the next heading under consideration is heading 5402, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex. The EN to heading 5402 provide, in pertinent part, that the heading covers synthetic filament yarn (other than sewing thread), including:

- (1) **Monofilament** (monofil) of less than 67 decitex.
- (2) **Multifilament** obtained by grouping together a number of monofilaments (varying from two filaments to several hundred) generally as they emerge from the spinnerets * * *.

Accordingly, the EN to heading 5402, HTSUSA, encompasses both synthetic monofilament and multifilament. Moreover, nylon is a synthetic material. See Note 1 to Chapter 54, HTSUSA, and HQ 088557, dated May 23, 1991.

The merchandise at issue is a plied yarn composed of three individual multifilament nylon yarns twisted together. The subject yarn is composed of nylon, which is a synthetic, and it is clearly not sewing thread. Therefore, as a three-ply multifilament synthetic yarn, the subject yarn falls within the scope of the EN to heading 5402. Accordingly, the subject nylon yarn on a spool is properly classifiable in heading 5402, HTSUSA, as synthetic filament yarn. See HQ 958135, dated March 18, 1996, (nylon multifilament yarn classifiable in heading 5402) and NY 803904, dated January 6, 1995 (two-ply polyester multifilament embroidery thread on a spool, classifiable in heading 5402). See also NY E80158, dated April 1, 1999; and NY G86022, dated January 29, 2001.

As the instant merchandise is a three-ply, multifilament, nylon, yarn on a spool, it is classified under subheading 5402.61.0000, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic mono-

filament of less than 67 decitex: Other yarn, multiple (folded) or cabled: Of nylon or other polyamides.

Holding:

Based on the foregoing, the subject merchandise is classified in subheading 5402.61.0000, HTSUSA, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, multiple (folded) or cabled: Of nylon or other polyamides. The applicable rate of duty is 7.8 percent *ad valorem* and the textile restraint category is 606.

NY H85147 is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

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Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach

Judith M. Barzilay
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THE
JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

Volume 100, Part 1, 1970

Decisions of the United States Court of International Trade

(Slip Op. 02-46)

TORRINGTON CO., PLAINTIFF AND DEFENDANT-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND KOYO SEIKO CO., LTD., KOYO CORP OF U.S.A., NTN CORP, NTN BEARING CORP OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP, NTN DRIVESHAFT, INC., NTN-BOWER CORP, AND NTN-BCA CORP, DEFENDANT-INTERVENORS AND PLAINTIFFS

Consolidated Court No. 99-08-00462

(Dated May 20, 2002)

JUDGMENT

TSOUCALAS, *Senior Judge*: This Court, having received and reviewed the United States Department of Commerce, International Trade Administration's ("Commerce") Final Results of Redetermination Pursuant to Court Remand, *Torrington Co. v. United States*, 2001 Ct. Intl. Trade LEXIS 142, Slip Op. 01-135 (Nov. 26, 2001) ("Remand Results"), responses and rebuttal comments by NTN Corporation, NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc., NTN-Bower Corporation and NTN-BCA Corporation and The Torrington Company's comments, holds that Commerce duly complied with the Court's remand order, and it is hereby

ORDERED that the Remand Results filed by Commerce on February 25, 2002, are affirmed in their entirety; and it is further

ORDERED that since all other issues have been decided, this case is dismissed.



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Customs Bulletin and Decisions
Vol. 36, No. 23, June 5, 2002

U.S. Customs Service

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U.S. Court of International Trade

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